



# **REVIEW OF LAND RELATED LAWS**

## **STUDY REPORT**

30<sup>th</sup> JULY 2018

## Foreword

The Uganda Law Reform Commission was established by the Uganda Law Reform Commission Act, Cap. 25 of the Laws of Uganda and later enshrined in the Constitution of the Republic of Uganda 1995.

The mission of the commission is “to reform and update the laws in line with the social, cultural and economic needs and values of the people of Uganda”. In order to achieve this mission, it is imperative that as broad a spectrum of the Ugandan society as possible is consulted and permitted to participate in the reform process especially during the course of research and investigations.

The commission with the support of the Justice, Law and Order Sector (JLOS), commenced the review of selected land laws in the financial year 2016/2017. The reform was intended to review selected issues on land matters in light of the social and economic needs of society, in line with the policies adopted in relation to land.

The specific issues that were reviewed included: the nature and causes of land conflicts prevailing; the adequacy of the existing legal regime relating to land ownership; the different available dispute resolution mechanisms in resolving land related disputes; and the issues affecting land use, planning, management and administration.

The study was conducted in 44 districts. The report presents the study findings based on field and literature review and recommendations of the study.

The Uganda Law Reform Commission is grateful for the support offered by various institutions, particularly the Justice Law and Order Sector (JLOS). Special thanks go to the respondents for cooperation exhibited, their invaluable time and commitment accorded to the review team during the study; and to all those who contributed in one way or another to the development of this report.



Dr. Pamela Tibihikirra-Kalyegira  
**Chairperson, Uganda Law Reform Commission**

## **Vision**

“Laws that facilitate transformation and development of Uganda”

## **Mission Statement**

“To reform and update the laws in line with the social, cultural and economic needs and values of the people of Uganda”

## **Core values of the Commission**

Professionalism, Accountability, Integrity and Result oriented

## **Motto**

“Law Reform for transformation and sustainable development”

## Contents

Foreword .....	ii
Executive Summary.....	vi
<b>CHAPTER 1: INTRODUCTION</b>	
1.0 Introduction .....	3
1.1 Background.....	3
1.2 Problem Statement .....	5
1.3 Rationale for the review .....	6
1.4 Objectives of the study.....	6
1.5 Scope of the review .....	7
<b>CHAPTER 2: ISSUES FOR CONSIDERATION</b>	
2.0 Introduction .....	8
2.1 Existing legal regime relating to land ownership.....	8
2.2 Nature and causes of land conflicts .....	9
2.3 Dispute resolution mechanisms for resolving land disputes .....	11
2.4 Issues affecting land use, planning, management and administration. ..	14
<b>CHAPTER 3: METHODOLOGY</b>	
3.0 Introduction .....	21
3.1 Study design .....	21
3.2 Study area.....	21
3.3 Sample selection and population .....	22
3.4 Data collection methods.....	22
<b>CHAPTER 4: FINDINGS AND ANALYSIS</b>	
4.0 Introduction .....	23
4.1 Conflicting tenure rights and interests on land.....	24
4.2 Land conflicts .....	27
4.3 Dispute resolution mechanisms .....	35
4.4 Land use planning.....	45
4.5 Land administration and management.....	48
<b>CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS</b>	
5.1 Conflicting tenure rights and interests on land.....	52
5.2 Land conflicts .....	53
5.3 Dispute resolution mechanisms .....	53
5.4 Land use planning.....	54
5.5 Land administration and management.....	55
REFERENCES .....	56

## Abbreviations

<b>CPF</b>	Central Processing Facility
<b>IDP</b>	Internally Displaced Persons
<b>JLOS</b>	Justice, Law and Order Sector
<b>LCCs</b>	Local Council Courts
<b>LRA</b>	Lords Resistance Army
<b>MoLHUD</b>	Ministry of Lands, Housing and Urban Development
<b>NLPIAP</b>	National Land Policy Implementation Action Plan

## Executive Summary

The Commission with the support of the Justice, Law and Order Sector (JLOS) undertook a study to review selected land related issues that are affecting land rights, use, planning, management and administration. The review was intended to; address challenges faced in the implementation of the different laws, identify and address issues in land ownership, use, planning, management and administration.

Land is a factor that is inelastic yet of vital importance to society. Uganda, as a predominantly agricultural economy, and with the current trend of industrialisation has experienced a lot of pressure on its land. This has had a bearing on ownership, management and administration of land, and ultimately the available dispute resolution mechanisms.

Various laws and policies have been enacted since the coming into force of the Constitution of Uganda. Despite these interventions, Uganda still faces challenges in land ownership, use, planning, management and administration that need to be addressed.

This study was undertaken to review selected land related legislation to improve land ownership, use, planning, management and administration. In particular, it sought to: explore the adequacy of the existing legal regime relating to land ownership; investigate the nature and causes of land conflicts prevailing; examine the different available dispute resolution mechanisms in resolving land related disputes; and examine issues affecting land use, planning, management and administration.

In undertaking the review of land laws, the Commission carried out literature review and field consultations. Both qualitative and quantitative methods of research were used during the study. The study was carried out in forty-four districts which included Abim, Adjumani, Agago, Alebtong, Amuru, Bukwo, Buliisa, Bushenyi, Gomba, Gulu, Hoima, Isingiro, Kabale, Kabarole, Kampala, Katakwi, Kayunga, Kibale, Kiboga, Kiruhura, Kotido, Kween, Lira, Luwero, Masaka, Masindi, Mbale, Mbarara, Mityana, Moroto, Mpigi, Mubende, Mukono, Nakapiripirit, Napak, Ntoroko, Nwoya, Otuke, Oyam, Rakai, Sembabule, Soroti, Wakiso and Yumbe among representatives from ministries, departments and agencies, development partners, district officials, land owners, tenants and the general public.

### Key findings and recommendations.

#### 1. The legal regimes relating to land ownership and their adequacy

The Constitution and Land Act create interests on land for lawful and *bona fide* tenants on *mailo*, freehold and leasehold tenure systems by granting them security of occupancy on the land. This has resulted in overlapping interests on land which have in turn created disharmony among the landlords and tenants and affected the security guaranteed with the ownership of registered land.

In order to provide a lasting solution to the problems created by overlapping interests on land, there is need to review the land tenure system, systematically demarcate land and sensitise communities on the provisions of the Land Act.

## **2. The nature and causes of land prevailing conflicts**

Land conflicts are prevalent in the country. The main reasons underlying the increased incidence of land conflict is the failure of the prevailing land tenure systems to respond to the challenges posed by appreciation of the value of land in a way that would enhance effective security of tenure.

The prevalent land conflicts in the country can be addressed by strengthening and improving coordination among actors, passing the National Legal Aid policy, embracing the registration of customary heirs as trustees of land and continuing to encourage Civil Society Organisations to offer services to the indigent on land matters.

## **3. Available dispute resolution mechanisms in resolving land related disputes**

There are various land dispute resolution mechanisms in place, however they operate in parallel without a clear hierarchy. These forums are also faced with various operational challenges and a lack of coordination.

There is need to streamline their operations, sensitise duty bearers and promote the use of alternative dispute resolution.

## **4. Land use and planning**

There is no effective land use plan in Uganda. An effective land use plan would foster economic growth, development and attract investors and enable the public to develop land in a systematic manner. Without an enforceable land use plan in place, the uncontrolled developments partly contribute to the weakening of the economic base.

Regulation and enforcement of land use plans is therefore vital, and this should be done country wide.

## **5. Land management and administration**

Various institutions are in place to perform functions in relation to land management and administration. These institutions do exist from the village level to the national level. The institutions are however faced with poor facilitation and their efforts are not coordinated.

As such, the need to coordinate the functions of the institutions that are charged with the management and administration of land is vital, coupled with increased facilitation.



# CHAPTER ONE

## INTRODUCTION

### 1.0 Introduction

Land is the most essential pillar of human existence and national development.<sup>1</sup> This is because it represents an important resource for the social and economic life of people. Despite the importance of land, the land sector in Uganda still faces several challenges that include insecurity of tenure, overlapping and conflicting land rights, and glaring inequity of access and ownership of land.

This study sought to establish the causes, magnitude, challenges, and implications and explore solutions to the identified problems.

### 1.1 Background

Land in Uganda, like in many other countries, is central in the livelihoods of the people. Over half of Uganda's households consider agriculture to be the single most important source of their livelihood. As such, land is a critical resource for the 42% of households that earn a living from subsistence farming<sup>2</sup> and for the 85% of the population employed in agriculture and hunting.<sup>3</sup> Taken together, land is of critical importance to many Ugandans, especially considering that 85% of the rural population depends on it for their livelihood and income.<sup>4</sup>

Norms and customs pertaining to land ownership, use and management dates as far back as pre colonial times in Uganda.<sup>5</sup> Prior to colonisation, land in Uganda was held invariably under customarily ownership. It was held and owned communally, with rights to access, use and inheritance lineage.<sup>6</sup>

Colonisation fundamentally changed Uganda's land tenure, use and management<sup>7</sup> by introducing individual ownership of land but at the same time creating multiple and conflicting tenure rights and interests on land.<sup>8</sup> For example, *mailo*, and freehold tenure systems were introduced in some parts of Uganda while retaining customary ownership in other parts.

1 Ministry of Lands, Housing and Urban Development, The *Uganda National Land Policy*, 2013, available at <http://extwprlegs1.fao.org/docs/pdf/uga163420.pdf>; accessed on 10<sup>th</sup> January 2019.

2 Uganda Bureau of Statistics, *Report on the Census of Business Establishments, 2010/2011*; available at [https://www.ubos.org/wp-content/uploads/publications/03\\_20182010\\_COBE\\_Report.pdf](https://www.ubos.org/wp-content/uploads/publications/03_20182010_COBE_Report.pdf); accessed on 10<sup>th</sup> March 2018.

3 Kaggwa, R., R. Hogan and E. Gowa (2004). *Policy Brief: Land Use Change, and Degradation and Human Welfare: Lessons Learned from the Lake Kyoga Catchment Area*. Nairobi: UNDP-UNEP Poverty-Environment Initiative. <http://citeseerx.ist.psu.edu/viewdoc/download?jsessionid=6E0896942B31DD23E64A2F358392893A?doi=10.1.1.667.3468&rep=rep1&type=pdf>, accessed on 12<sup>th</sup> January 2019.

4 Norah Owaraga, "Conflict in Uganda's Land Tenure system", *Africa portal a Project of Africa Initiatives*, issue No. 26 May 2012, available at, accessed on 10<sup>th</sup> March 2019.

5 Joy M.B Tukahirwa, Policies, People and Land use change in Uganda. A Case study of Ntungamo, Lake Mburo and Sango Bay Sites. LUCID Working paper Series Number 7. September 2002 [http://www.lucideastafrica.org/publications/Tukahirwa\\_Lucid\\_WP17.pdf](http://www.lucideastafrica.org/publications/Tukahirwa_Lucid_WP17.pdf), accessed on 8<sup>th</sup> April 2019.

6 Ibid

7 Supra Note 1

8 Ibid

After independence, Uganda's land system was characterised by changes brought about by political circumstances at the time. For example, the Land Reform Decree 1975 declared all land in Uganda to belong to the State. Freehold and *mailo* ownership were abolished and converted into lease hold for a period of 49 years. Customary occupants were to hold land at sufferance.<sup>9</sup> This remained the law regulating land ownership, use and management until a new constitution was promulgated in 1995.

The 1995 Constitution vested all land in Uganda to the citizens who were to own it according to the different tenure systems.<sup>10</sup> It reorganised the rights of occupancy for lawful and *bona fide* tenants,<sup>11</sup> introduced new management and administration structures, government and local governments were to hold certain lands in trust for the people,<sup>12</sup> and the government was to acquire land in public interest on conditions to be prescribed by Parliament.<sup>13</sup>

The history of land disputes in Uganda, just like in most African countries, is intricately linked to colonialism. Like other former colonial states at independence, the land question and past inequalities in Uganda remain unresolved.

In Uganda, land-related disputes are not new. They existed prior to and during colonialism, as well as in the immediate post-colonial administrations. It is important to note that from 1986 to date, there have been attempts to streamline land administration through ensuring constitutional protection of land rights under *Article 26* of the Constitution of Uganda.

However, developments in Uganda, such as the creation of many districts based on ethnic groupings, have created border disputes among the districts. In addition, the influx of many foreign investors in Uganda has increased the demand for large pieces of land for industrial and commercial agricultural purposes. These factors have escalated conflicts in parts of Uganda, some of which have been bloody and often characterised by massive population displacements and extensive destruction of property to levels that culminate into international humanitarian crises. Some policies such as the gazetting of large chunks of land for conservation purposes have also been noted as a source of conflict.

Over all, it is estimated that land disputes are so widespread in Uganda that they affect 33 % to 50 % of land holders. In recent times, land disputes have largely been between government or big industries and traditional societies. This usually results in forced evictions, where members of a large population are forcefully moved and their properties destroyed to make way for development projects. These efforts by private sector actors to acquire land have increased competition for land and sparked disputes with local communities.

9 Land Reform Decree 1975

10 Article 237(3), Constitution of the Republic of Uganda

11 Ibid, Article 237(9)

12 Ibid, Article 237

13 Ibid

Since the coming into force of the 1995 Constitution, different laws have been enacted and policies passed by government to give effect and implement the provisions of the Constitution.<sup>14</sup> Despite these interventions, Uganda still faces challenges in land ownership, use, planning, management and administration that need to be addressed.

## 1.2 Problem Statement

Uganda is currently faced with land conflicts and disputes that stem from land ownership and use. Competing and conflicting land use frequently are seen as the reason for social conflicts between the local population, the authorities, and prospective investors. The overlapping rights on *mailo* land have created investment disincentives and reduced productivity by up to 25 %.<sup>15</sup>

The competing interests on land have created insecurity of tenure and use for land owners under the different tenure systems and for lawful and *bona fide* occupants that have only occupancy rights. This has resulted in land conflicts between the land owners and tenants; led to tensions, violence and sometimes arbitrary evictions. As a result optimal land use has been compromised and access to credit hindered.

The current legal framework provides for various mechanisms for land dispute resolutions. These include Local Councils Courts, Courts of Judicature, Land Tribunals, and mediations.<sup>16</sup> These mechanisms however overlap, are not certain and predictable and are not streamlined to provide a harmonised system of dispute resolution. The lack of clarity, certainty, and predictability of these mechanisms have facilitated forum shopping, increased the cost of dispute resolution and caused delays in administration of justice. The situation is further complicated by the involvement of political leaders in the resolution of land disputes.

Land use and management is vital to planning and development of the country's economy. The vesting of land in the citizens under the different land tenure systems has affected land use and management thereby affecting government's initiatives to plan and develop Uganda's economy. Government is always confronted with paying huge sums of money in compensations before undertaking development plans. This has affected development of infrastructures in the country.

Uganda is faced with challenges of ineffective management of land use and planning. This has greatly affected sustainable land use, resulting into unsustainable

14 Land Act, Cap. 227 as Amended in 2004 and 2010. National Environmental Management Act, Local Council Courts Act, The Uganda National Land Policy 2013, National Land Use Policy 2007.

15 Klaus Deininger and Daniel Ayalew Ali, *Do Overlapping Land Rights Reduce Agricultural Investment? Evidence from Uganda*. The World Bank Development Research Group, Sustainable Rural and Urban Development Team August 2007, available at [https://www.researchgate.net/publication/23550310\\_Do\\_overlapping\\_property\\_rights\\_reduce\\_agricultural\\_investment\\_evidence\\_from\\_Uganda](https://www.researchgate.net/publication/23550310_Do_overlapping_property_rights_reduce_agricultural_investment_evidence_from_Uganda), accessed on 11th March 2018.

16 Land Act, Cap 227 as amended, Laws of Uganda

land use, rapid urbanization and poor conservation and management of natural resources and ecosystems.<sup>17</sup>

Currently, the responsibility for land use and land management is scattered among various bureaucracies each managing isolated elements of the whole, which are often uncoordinated and in competition with one another for recognition and resources.<sup>18</sup>

### 1.3 Rationale for the review

The government has recognised the need to subject all tenure systems to regulatory powers of the state to ensure compliance with physical planning standards, regulations and guidelines for orderly development. The Government through the National Land Policy, 2013 has recognised the need to resolve the multiple, overlapping and conflicting interests on land. This can be achieved through legislative reforms that promote land sharing and putting in place dispute resolution mechanisms. Addressing these conflicts will reduce land conflicts, guarantee security of tenure and interest on land, thereby allowing optimal use and utilization of land.

Under the National Land Policy, 2013 Government has recognised the need for speedy and affordable dispute resolution mechanisms to reduce land disputes. A streamlined dispute resolution mechanism will limit forum shopping, facilitate faster, cheaper, certain and predictable mechanisms for dispute resolution.

There is lack of comprehensive and integrated land use planning in the country, to enable rational and optimal land utilisation that would facilitate systematic land use.

### 1.4 Objectives of the study

The overall objective of the study was to review selected land related legislation to improve land ownership, use, planning, management and administration.

The specific objectives was to—

1. investigate the nature and causes of land conflicts prevailing;
2. explore the adequacy of the existing legal regime relating to land ownership;
3. examine the different available dispute resolution mechanisms in resolving land related disputes; and
4. examine issues affecting land use, planning, management and administration.

17 The Uganda National Land Policy Implementation Action Plan 2015/2016-2018/2019, available at <http://mlhud.go.ug/wp-content/uploads/2015/10/National-Land-Policy-Implementation-Action-Plan-2015-16-to-2018-19.pdf>, accessed on 15<sup>th</sup> March 2018.

18 Ibid

## **1.5 Scope of the review**

The study focused on—

1. the existing legal regimes relating to land ownership and their adequacy;
2. the nature and causes of prevailing land conflicts;
3. the available dispute resolution mechanisms for resolving land disputes; and
4. issues affecting land use, planning, management and administration.

## CHAPTER 2

# ISSUES FOR CONSIDERATION

### 2.0 Introduction

This part provides an in-depth analysis into the issues that were reviewed based on the literature available. The issues identified include the causes and nature of land conflicts prevailing in Uganda, overlapping multiple and conflicting tenure rights and interests on land, land dispute resolution mechanisms and land use planning.

### 2.1 Existing legal regime relating to land ownership

The land tenure systems and interests on land in Uganda, are regulated by the 1995 Constitution and the Land Act, Cap. 227 as amended. Land is owned and held under the following land tenure systems; customary, freehold, *mailo* and leasehold.<sup>19</sup> The interests created under the different tenure systems are secured by registering and acquiring a certificate of title or certificate of customarily ownership.

The Constitution and Land Act further create interests on land for lawful and *bona fide* tenants on *mailo*, freehold and leasehold tenure systems by granting them security of occupancy on the land.<sup>20</sup> The perpetual security of the two categories of occupants is guaranteed provided they pay a nominal rent to the landowner. These interests are registrable and certificates of occupancy may be issued to the occupants.<sup>21</sup>

The different tenure systems and occupancy interests created by the Constitution and the Land Act, account for land conflict arising from disagreements between land owners and lawful occupants or *bona fide* occupants.<sup>22</sup> The definition of rights accorded to *bona fide* occupants continues to be contested by land owners. The nominal rent payable by lawful occupants is often not paid or ignored hence deepening conflicts. Furthermore, lack of a statutory instrument prescribing nominal ground rent to be paid by lawful occupants has left a vacuum on how much should be paid.

The disagreements between land owners and lawful occupants or *bona fide* occupants undermine land use and utilization, resulting in increased evictions and create land insecurity.<sup>23</sup> Overlapping property rights on *mailo* land have created investment disincentives and reduced productivity by up to 25%.<sup>24</sup> Further,

19 Supra Note, 10, Article 237 and Section 2 of the Land Act, Cap. 227.

20 Article 237 Constitution of the Republic of Uganda.

21 Ibid.

22 Supra Note 1.

23 Supra Note 1.

24 Supra note 15

the different interests created on land by the current framework hinders easy transaction on land. They affect sale transactions, the land market and access to credit

financing for agriculture, infrastructure development, planning, management and administration of the land.<sup>25</sup>

Finding a lasting solution to the problems created by overlapping interests on land is vital to ensure development through optimal land utilization. This can be achieved through; establishing a mechanism that allows dialogue and engagements between landlords and lawful and *bona fide* occupants, harmonising and streamlining the competing tenure regimes in Uganda for equitable access to land and security of tenure,<sup>26</sup> “redressing historical injustices to protect the land rights of groups and communities marginalised by history or on the basis of gender, religion, ethnicity and other forms of vulnerability to achieve balanced growth and social equity,”<sup>27</sup> and instituting a dispute resolution mechanism that specifically seeks to resolve conflicts between land owners and tenants on land.

The review sought to explore the mechanisms to resolve the land lord tenant impasse.

The issue for consideration was what strategies can be adopted to solve the conflicts between *bona fide*, lawful occupants and registered land owners?

## 2.2 Nature and causes of land conflicts

Land conflicts are prevalent in the country. The main reasons underlying the increased incidence of land conflict is the failure of the prevailing land tenure systems to respond to the challenges posed by appreciation of the value of land in a way that would enhance effective tenure security.<sup>28</sup> The incidents of land conflicts differ from region to region. This can be partly attributed to land ownership under a particular tenure system, population pressure and economic activities.

Studies indicate that prevalence of land conflicts at household level is high (34.9%) and is slightly higher amongst rural households (36%) compared to urban households (33%).<sup>29</sup> The conflicts range from:<sup>30</sup> boundary disputes; ownership conflicts due to lack of land registration; multiple sales of the same piece of land by individuals; multiple allocations of the same piece of land by district authorities, competing uses/rights on common and collective land; Illegal/ improper uses of common property; land grabbing; Illegal sale of government land; Illegal leases

25 Supra Note 15.

26 Supra Note 1, Page 9, paragraph 2.4 (4)(ii).

27 Supra Note 1, Page 9, paragraph 2.4 (4)(iv).

28 Klaus Deininger and Raffaella Castagnini, “Incidents and Impacts of Land Conflicts in Uganda” World Bank Policy Research Working Paper 3248, March 2004.

29 Integrated study on land and family justice, report by JLOS 2008.

30 Margaret A. Rugadya, Review of Literature on Post Conflict Land Policy and Administration Issues, During Return and Resettlement of IDPS: International Experience and Lessons from Uganda. September 2006 available at <https://citeseerx.ist.psu.edu/viewdoc/download?doi>

of government land (including concession land, forests, mines); abuse of powers by the land registrars; and lack of effective management of land administration.

The different land conflicts highlighted can be attributed to tenure systems that pertain to a particular place, competing and overlapping interests on land, laxity in institutional management, unregistered land, cultural practices, land market and speculations, improper government land allocation, corruption in management and administration institutions, failure to have in place a streamlined dispute resolution mechanism, population growth and increased urbanization, rural–urban migration, succession and inheritance, increased pressure on land for economic development, political interference, demands from traditional and cultural leaders fraudulent dealing among others.

Land-related conflicts have a negative impact on productivity as well as equity.<sup>31</sup> The prevalence of land conflict signifies that the current legal framework is not adequate to eliminate land conflicts.<sup>32</sup> Land conflicts have negative effects on individual households as well as on Uganda's economy.<sup>33</sup> Conflicts increase costs of transacting on land, affect land use and utilization, planning for infrastructure development, discourage investment, create insecurity of land tenure, fuel violence and evictions, result in the loss of property and reduce taxable income on the would be investments on the land;<sup>34</sup> affect the building environment increase social and political instability.

Further, conflict and the associated fear of losing land partly undermine the functioning of land markets, implying that producers who lack knowledge or resources (e.g. labor) for self-cultivation will not use the land.<sup>35</sup> Tenure insecurity curtails land users from investing in land improvement, putting up permanent structures, and undertaking soil and water conservation programs.<sup>36</sup>

Government has overtime put in place interventions aimed at curbing land conflicts. These include; developing policies and strategies, enacting land related laws that provide fora for dispute resolutions, introducing institutional changes, establishing the land fund, decentralising dispute resolution mechanisms, encouraging mediation of disputes, establishing specialised units to deal with land matters among others. Despite these interventions, land conflicts are on the increase and there is limited institutional capacity to adjudicate and settle these disputes.<sup>37</sup> Corruption and illegitimate demands for money slow the justice delivery process for land disputes.<sup>38</sup>

31 Klaus Deininger and Raffaella Castagnini, "Incidents and Impacts of Land Conflicts in Uganda" World Bank Policy Research Working Paper 3248, March 2004 <http://web.worldbank.org/archive/website01066/WEB/IMAGES/109509-2.PDF>.

32 <http://web.worldbank.org/archive/website01066/WEB/IMAGES/109509-2.PDF>.

33 Klaus Deininger and Raffaella Castagnini, "Incidents and Impacts of Land Conflicts in Uganda" World Bank Policy Research Working Paper 3248, March 2004.

34 Supra Note 3.

35 <http://www.aresearchtrust.org/wp-content/uploads/2015/11/ESCALATING-LAND-CONFLICTS-IN-UGANDA-A-review-of-evidence-from-recent-studies-and-surveys.pdf>.

36 <http://www.aresearchtrust.org/wp-content/uploads/2015/11/ESCALATING-LAND-CONFLICTS-IN-UGANDA-A-review-of-evidence-from-recent-studies-and-surveys.pdf>.

37 Integrated study on Land and Family justice, JLOS 2008.

38 Integrated study on Land and Family justice, JLOS 2008.



Managing and solving land conflicts is vital for Uganda's economic development, stability and food security. The changes brought about by the current legal framework to reduce incidents of land conflicts have not yielded much in the way of results, this implies that, in order to be effective, such legal initiatives need to be complemented by effective implementation<sup>39</sup> and regular review of existing policies and laws to counter the dynamics in land conflict.

The review investigated the effectiveness of the legal framework in handling land conflicts, why the efforts to address land conflicts have not been effective, and explored effective mechanisms to resolve land conflicts.

The issues for consideration were—

1. What is the nature of land conflicts and their causes?
2. How best can land conflicts be resolved?
3. What mechanisms and strategies can be devised to reduce land conflicts?
4. How effective is the current legal framework in dealing with land conflicts?

### 2.3 Dispute resolution mechanisms for resolving land disputes

Dispute resolution mechanisms are crucial to resolution of conflicts which translates into land security, peace and optimal land utilization. The Land Act establishes different dispute resolution mechanisms. They include courts of judicature,<sup>40</sup> Local Council Courts,<sup>41</sup> traditional leaders,<sup>42</sup> mediators,<sup>43</sup> and Land tribunals.<sup>44</sup> These mechanisms are intended to facilitate easy resolution of disputes by decentralising the systems. These dispute resolution systems however operate in parallel with no clear hierarchy or limits. For example, all dispute resolution systems have first instance jurisdiction to entertain land disputes.

Lack of a clear dispute resolution mechanism hierarchy has caused uncertainty and lack of predictability in the system which has resulted into forum shopping.<sup>45&46</sup>

Limited capacity in the institutions charged with adjudication and settlement of land disputes has greatly hampered the dispensation of justice in land matters. The Justice Law and Order Sector (JLOS) report on the Integrated Study on Land and Family Justice revealed that land disputes are on the increase and yet there is limited capacity in the institutions charged with adjudication and settlement of land disputes.<sup>47</sup> It noted that while optimising the existing land conflict resolution system within Uganda, it is important to analyse the existing linkages and hierarchies

39 <http://www.aresearchtrust.org/wp-content/uploads/2015/11/ESCALATING-LAND-CONFLICTS-IN-UGANDA-A-review-of-evidence-from-recent-studies-and-surveys.pdf>.

40 Section 87 of the Land Act, Cap. 227.

41 Section 76(A) of the Land Act, Cap. 227.

42 Section 88 of the Land Act, Cap. 227.

43 Section 30 of the Land Act, Cap. 227.

44 Section 76 of the Land Act, Cap. 227.

45 Integrated study on land and family justice, Justice Law and Order Sector.

46 <http://www.aresearchtrust.org/wp-content/uploads/2015/11/ESCALATING-LAND-CONFLICTS-IN-UGANDA-A-review-of-evidence-from-recent-studies-and-surveys-pdf>, accessed on 10th March 2018.

47 Integrated study on land and family justice, report by JLOS 2008.

between and among the different conflict resolution institutions, as well as how and where people can access the system.<sup>48</sup>

The adoption of an ambitious institutional design together with lack of funding which implied that the intended institutional reforms embedded in the Land Act could not take off, has contributed to the failure to have a sound institutional presence for land dispute resolution.<sup>49</sup>

The non-existence of institutions legally mandated to handle land disputes like the Local Council Courts and the land tribunals, lack of procedure as well as lack of a guide for mediators and traditional institutions in handling land matters has affected the effectiveness of the current dispute resolution mechanisms.

Other dispute resolution mechanisms not envisaged in the law have cropped up to fill the gap and satisfy people's expectations. For example, the President's office has established a land division, the State House Land Division, that handles land disputes. Resident District Commissioners have also been reported to be actively involved in handling land disputes with limited capacity in land matters. The Uganda Police Force has also established a unit within the forces, CIID Land Division, located at Kibuli, to investigate conflicts arising from land matters. The powers of police are limited to investigating matters and making recommendation for prosecution. Sometimes the Police Officers act as mediators to resolve disputes. Other aggrieved persons report land disputes to political leaders like members of parliament. This list is not exhaustive. The involvement of institutions not mandated by the law in resolving land related disputes has left the justice-seeking public confused, caused delays in settlement of disputes and created a backlog as disputes escalate.<sup>50</sup>

Studies reviewed suggest that the available resources for local dispute resolution in the form of Local Council Courts, mediation, and customary processes are significantly effective in some parts of the country.<sup>51</sup> This is attributed to the shortcomings posed by the courts of judicature.<sup>52</sup> For example, the adversarial nature of the court system, formal technicalities, language, cost, delays, and sometimes the courts are not easily accessed.

However, their competence to resolve conflicts and integrity of Local Council Courts and local leaders is questioned.<sup>53</sup> For instance, it is observed that high

48 Integrated Study On Land And Family Justice in 20 Districts by Ministry of Justice and Constitutional Affairs (MOJ), May 2008. (The President has often cautioned Resident District Commissioners against handling land cases saying their major responsibility is to investigate what the problem is; what the law says; and cross check with the land offices before submitting reports to the relevant authorities for action. <http://www.aresearchtrust.org/wp-content/uploads/2015/11/ESCALATING-LAND-CONFLICTS-IN-UGANDA-A-review-of-evidence-from-recent-studies-and-surveys.pdf>).

49 Supra Note 46

50 Supra Note 46

51 Julian Hopwood and Ronald R. Atkinson (University of South Carolina) November 2015 Developing a land conflict monitoring and mapping tool for the Acholi sub region of northern Uganda. Available <http://www.lse.ac.uk/internationalDevelopment/research/JSRP/downloads/JSRP28.HopwoodAtkinson.pdf>, accessed on 19 March 2018.

52 Supra Note 51

53 Supra Note 51

resolution rates do not necessarily point to fair decision-making, but might instead be achieved through consistently finding in favour of stronger parties.<sup>54</sup>

The efficacy of the institutions is well below the expected standards, courts of judicature are clogged with case backlog, Local Council Courts are not constituted by law, the Local Council Courts lack capacity, they often go beyond their mandates, do not keep records, and land tribunals are not operational. For example, during the case census findings for 2015, it was found that land case backlog in the Judiciary at all court levels accounts for 25.16%.<sup>55</sup> This has led the public to lose confidence in the whole system leading to extra judicial means to resolve disputes which result into violence and loss of lives.<sup>56</sup>

Studies have shown that many types of land disputes are best managed outside the courts.<sup>57</sup> Alternative dispute resolution processes, especially mediation and arbitration, can be useful, while customary and community-based mechanisms for conflict resolution may be relevant in some cases. There is however no documentation of where they are, where they exist and how they work, which makes it difficult to formalise their operations.

Local Council Courts are trusted by people as being accessible, fair, and uncomplicated.<sup>58</sup> However, the limited Local Council Courts capacity as to process, efficiency and transparency are seen as weakness to the system.<sup>59</sup>

Lack of flexible and certain dispute resolution mechanisms creates uncertainty and unpredictability in resolving land disputes. This is mainly caused by overlapping mandates by institutions charged with handling land disputes.

The review explored the parallel dispute resolution mechanisms in place, identified the forms in which forum shopping manifests, established the capacity of the institutions charged with adjudication and settlement of land disputes, established the impact of the existence of an ambitious institutional design to planning, utilisation, management and administration, and identified other dispute resolution mechanisms that exist outside the law within the communities.

The issues for consideration were—

1. How effective are the current dispute resolution mechanisms?
2. Which dispute resolution mechanism is best suited to deal with land disputes?
3. What challenges are faced by institutions charged with adjudication and settlement of land disputes?
4. What is the effect of having multiple dispute resolution mechanisms in place?

54 Supra Note 51

55 JLOS: Semi Annual Progress Report 2015/2016, pg. 41- 42.

56 Supra Note 46

57 Supra Note 46

58 Supra Note 46

59 Supra Note 46

## 2.4 Issues affecting land use, planning, management and administration.

### 2.4.1 Land use planning

Land use planning is understood as a systematic and iterative procedure carried out in order to create an enabling environment for sustainable development of land resources which meets people's needs and demands. It assesses the physical, socio-economic, institutional and legal potentials and constraints with respect to optimal and sustainable use of natural resources and land and empowers people to make decisions about how to allocate those resources. According to the 1995 Constitution, land belongs to the people and is vested according to different types of land tenure systems.<sup>60</sup> However, land constituting of natural resources and available for public good is held by the Government in trust for the people of Uganda.

Land use planning is core to Uganda's development; this is reflected in the vision for the National Land Policy as follows: "a transformed Ugandan society through optimal use and management of land resources for a prosperous and industrialised economy with a developed services sector." Land use and utilization in Uganda can be divided into three components, namely: agriculture (crops and livestock), the built areas, and land reserved for conservation.<sup>61</sup> Land use and utilization is regulated by the Land Act and the Physical Planning Act, Act No. 8 of 2010. According to section 43, land must be utilized in accordance with various laws such as the National Forestry and Tree Planting Act, No. 8 of 2003; the Mining Act, No. 9 of 2003; the Water Act, the Uganda Wildlife Act, National Environmental Act and any other law. This is intended to ensure that any land use does not deplete the natural resources or affect the environment.<sup>62</sup>

The Physical Planning Board,<sup>63</sup> is mandated to oversee land use planning, by among others giving advice and recommendations on matters of physical planning; to approve regional, district and urban development plans; to cause physical development plans to be prepared; to formulate draft policies, standards, manuals and to ensure the integration of physical planning with social and economic planning at all levels. Land use planning creates the preconditions required to achieve a type of land use that is environmentally sustainable, socially just and desirable and economically sound<sup>64</sup>. It thereby activates social processes of decision making and consensus building concerning the utilization and protection of private, communal or public areas.<sup>65</sup>

Uganda is faced with challenges of inadequate land use planning and enforcement of land use regulations, unsustainable land use, rapid urbanization and poor

60 Article 237, Constitution of the Republic of Uganda.

61 Land Use Policy 2006.

62 Amooti Godfrey Nyakaana Vs. NEMA and 6 others Constitutional Petition No. 3 of 2005.

63 Section 6 of the Physical Planning Act, No. 8 of 2010, Laws of Uganda

64 <https://www.giz.de/fachexpertise/downloads/Fachexpertise/giz2012-en-land-use-planning-manual.pdf>.

65 <https://www.giz.de/fachexpertise/downloads/Fachexpertise/giz2012-en-land-use-planning-manual.pdf>

conservation and management of natural resources and ecosystems.<sup>66</sup> Currently, the responsibility of land use and land management is scattered among various bureaucracies each managing isolated elements of the whole which are often poorly coordinated and in competition with one another for recognition and resources.<sup>67</sup> This results in poor use, conflict and low productivity.

As a development resource, land in Uganda has not always been utilized optimally and sustainably.<sup>68</sup> The primary reason is that there is less investment in agricultural production that is still structured around peasant farming. The continued growth of the country will require a coherent and pragmatic approach that frees land for commercial agricultural production in order to move out of poverty and attain food security by creating alternatives in the service and industrial sectors.<sup>69</sup>

Accordingly, the government has committed itself to facilitate land use regulation and land development to enhance economic productivity and commercial competitiveness for wealth creation and overall socio-economic development.<sup>70</sup> The strategies set forth to achieve this include: integrating the land sector into the overall national development planning framework; reforming the land ownership rights and interests; standardizing land use planning and land development practices for orderly development; and enhancing access to land for large-scale commercial investments without prejudicing security of tenure for the Citizens of Uganda.<sup>71</sup> Competing and conflicting land uses frequently are also the reason for social conflicts between the local population, the authorities and prospective investors. As the government strives to achieve middle income status, it is encouraging investors and undertaking infrastructure development. These often compete and conflict with the use of the local population in the affected areas. For example, activities like oil exploration in Bulisa, road construction activities, mineral mining and government allocating land to investors are some of the activities that have left the local population displaced or dissatisfied with the processes.

Despite the existence of enabling legislation, Uganda lacks a comprehensive and integrated land use plan that enables rationale and optimal land utilisation. The current land use planning is inadequate and does not cover the local, regional and national levels. There is need for a systematic and scientifically based land use planning. Lack of a systematic land use planning has the potential to cause adverse impact, including land use conflicts with neighboring land uses, particularly with agricultural areas, rural uses, natural resource areas and environmentally sensitive and fragile ecosystems, as well as loss of productive land and ecosystem services.

There is a need to prevent or at least minimize social conflicts arising from acquisition of lands or development of such activities that pose conflicts. Land

66 The Uganda National Land Policy Implementation Action Plan 2015/2016- 2018/2019

67 The Uganda National Land Policy Implementation Action Plan 2015/2016- 2018/2019

68 Supra Note 1.

69 Supra Note 1.

70 Supra Note 1.

71 Supra Note 1.

use planning should be undertaken giving due considerations to social aspects. Inclusive growth, poverty eradication and gender equality are indispensable requirements for sustainable development of Uganda, and must be addressed in all policies, plans and programmes. Developmental sectors and activities must be planned in a balanced manner to meet economic, social and environmental needs of present and future generations, and should aim to minimize displacement of population. Accordingly, development planning must be comprehensive, sustainable, and integrated vertically (national, state, regional and local levels) taking into consideration the interests of all other sectors and stakeholders.

The Land Use Policy, 2007 identified several issues affecting land use in Uganda to include: lack of adequate information on land use; inadequate land use planning structures and capacity at all levels in the country; lack of harmonization of laws and policies related to land use; insufficient and uncoordinated land evaluation for suitable land allocation; ineffective implementation of existing land use policy and law related to land use and inadequate financial resources for institutions responsible for land management.<sup>72</sup>

Land use planning is also affected by the current land system in Uganda that emphasises individual ownership of land. Individual land ownership greatly hampers physical planning in the country mainly because it increases the cost of physical planning, development of infrastructures through compensation payable to the individual land owners. The increase in compensation is brought about by speculative land acquisition steered by corruption. For example, it was noted that speculative land acquisition and individual land ownership account for the increase in the cost of road construction and the standard railway gauge. It has been noted that the *Mailo* and freehold land tenure systems dominant in Buganda, Ankole and Tororo regions of Uganda, have effectively locked out large and prime areas of land from the development process. This appears to impede the growth and orderly planning of land in general, but more so in and around fast growing metropolitan areas.<sup>73</sup>

The question of proper land use and utilization in Uganda has gained prominence in the face of growing population, land conflicts, mounting demand for land resources and land for development. This calls for prudent and participatory planning and utilization of land in an equitable, efficient and sustainable manner that maximizes production and fosters economic development.

The National Environmental Management Authority in its state of the Environment report for Uganda NEMA (1996) argued that inappropriate and uncontrolled land uses are a major cause of degradation and depletion of land resources. The most fragile ecosystems are the highlands and dry lands.<sup>74</sup>

72 Land Use Policy, 2007

73 [siteresources.worldbank.org/INTIE/Resources/Ahene.do](http://siteresources.worldbank.org/INTIE/Resources/Ahene.do)

74 NEMA State of the Environment Report for Uganda 1996

In the face of scarce resources and increasing conflicts over land uses, the role of land use planning for sustainable management of natural resources and land utilization are apparent: land use planning helps—<sup>75</sup>

- (a) systematically examine current and future land use systems;
- (b) determine the natural resources assets and the carrying capacity of ecosystems for various land uses and considering changing demands;
- (c) assess physical, social and economic development factors including institutional and political framework conditions;
- (d) specify management standards and inputs for different land use types;
- (e) identify land use options, assessing their potential benefits and risks in ecological, social and economic terms, and thereby contributing to the resolution of conflicts over usage claims;
- (f) co-ordinate the work of sectoral agencies related to land use;
- (g) in visualisation and translation of long-term social, economic and environmental goals into physical plans that guide sustainable development;
- (h) minimise land use conflicts and competition among sectors through orderly disposition;
- (i) minimise negative impacts of pollution, climate change, social conflicts and disaster risks;
- (j) achieve the developmental targets, as well as reforms and fast-track growth targets in line with the agenda of the government and the people's needs;
- (k) contribute to food security and improved livelihood of rural population by proper planning of rural and agricultural lands.
- (l) contribute to protecting environmentally sensitive zones and ecosystem services areas through proper planning and well defined planning processes; and contribute to empowering communities and women in planning and decision-making.

Land use planning presents a development approach that contributes to the prevention of land use conflicts, the adaptation of land uses to physical and ecological conditions, the lasting protection of land as a natural resource, the lasting productive use of land and a balanced use that fulfils all social, ecological and economic requirements.<sup>76</sup>

Land use planning is a centrally important government function, directly affecting the lives of all people. It is therefore particularly important that it is characterised by fairness and transparency and that people are afforded a meaningful right to participate in decisions. When public authorities formulate new plans, they must put in place processes that actively involve citizens, interest groups, stakeholders and others. In the interests of good governance it is essential that there be effective coordination between the different sectors and spheres involved in land use and development. The greater the coordination, cooperation and transparency of the

<sup>75</sup> Raghu Babu Nukala, Dieter Mutz, Strategic Approach for Sustainable Land Use in an Emerging Country – Case of India: A paper prepared for presentation at the 2015 World Bank Conference on Land and Poverty, Washington DC March 23rd – 27th 2015 available at: [https://capacity4dev.ec.europa.eu/.../nukala\\_strategicapproachforsustainablelandusein](https://capacity4dev.ec.europa.eu/.../nukala_strategicapproachforsustainablelandusein).

<sup>76</sup> <https://www.giz.de/fachexpertise/downloads/Fachexpertise/giz2012-en-land-use-planning-manual.pdf>

planning process within government the greater will be the prospects of members of the public being able to engage with the decision making in a constructive manner.

The National Land Policy calls on the state to exercise the power of public regulation of land use, in the interest of socio-economic welfare and development.<sup>77</sup> The strategies set by the policy to achieve this statement is to review existing policies and laws on public regulation of land use to conform with the provisions of the policy; harmonize the application of the power of public regulation of land use by the Central government and Local Governments in a set of prescribed guidelines; among others.

There is need to integrate land ownership with land use regulations to support efforts aimed at the transformation of land users with greater emphasis on urbanization, attaining food security using land with an orientation to commercial agriculture for the majority of peasants who live on less than one dollar per day.<sup>78</sup> Furthermore, where land development projects are initiated by the private and non-governmental sectors, there must be procedures that ensure that interested parties have an opportunity to express their views or to object.

The review will identify the inadequacies in land use planning and enforcement of land use regulations, explore mechanisms for optimal and sustainable land use, identify the factors affecting proper implementation of the land use policy and law, and explore strategies for addressing the challenges being posed by the current tenure systems in land use planning.

The issues for consideration were;

1. How effective is the current land use planning?
2. What mechanisms can be adopted to achieve optimal and sustainable land use planning?
3. What factors affect proper land use in Uganda?
4. How effective are the current land use policies and laws?
5. Whether the country has a systematic national land use plan that is integrated at national and regional level?
6. What considerations should be taken into account in developing a systematic land use plan?
7. How effective are the current land use planning structures?
8. What challenges are faced in land use planning and how can they be addressed?

---

77 Supra Note 1.

78 Supra Note 1.



## 2.4.2 Land administration and management

Land administration and management is vested in different government ministries, departments and agencies. They include, Ministry of Lands Housing and Urban development (department of land registration, surveys, and valuation), Uganda Land Commission, District Land Boards, Land Committees and the recorder at the subcounty level.<sup>79</sup> Land administration has been decentralised to allow easy access and ensure that institutions are accountable to the local communities. Despite this endeavour the institutions face challenges associated with lack of supervision, poor work ethics, abuse of power and authority and insufficient funding, which has rendered the institutions ineffective.

Shortcomings of the land registration system in Uganda and most African countries have been identified as a significant barrier to investment and the development of the land market.<sup>80</sup> The challenges faced by the land registry include limited funding to effectively carry out their mandate, corruption, limited capacity, fraud, limited supervision, lack of transparency and delays in transactions which has led to the cropping up of unregulated middle men in land transactions, among others. It is common practice for an applicant for an official search report not to get feedback.

Ignorance of the public coupled with bureaucratic procedures has also caused land information inefficiency in Uganda. Majority of the members of the public do not know the costs or even procedures for registering a property in case the property has changed hands whether through transaction, inheritance or gift. In addition, it is very difficult to get land information from the registry. As a result, for one to get land information, they employ a chain of people which not only leads to high costs but a breeding ground for theft and forgery. This has also made people lose trust and confidence in the system.<sup>81</sup>

The ministries, departments and agencies responsible for land administration face challenges that have affected land transactions, utilization, and ownership of land. Sometimes these challenges have resulted in land conflicts, deterred investment and increased the cost of doing business.

The weakness in the current legal framework has affected the operation of the institutions tasked with land management. For instance, the excessive powers entrusted with the land administrators is in some cases misused or abused. The Uganda Land Commission and District Land Boards have powers to grant estates and create rights or interests on land and to manage and dispose or otherwise deal with the estate or interest in relation to land vested in it. This power has in some instances been misused or abused by these institutions, e.g. grants of land

79 Sections 46 54, 64, 68 Land Act, Cap. 227

80 Rexford A. Ahene, Measures to Improve Access to Land Resources and Related Benefits in Uganda, 20: Private Sector Competitiveness Project II, Land Component. World Bank / Private Sector Foundation Uganda. Available *siteresources.worldbank.org/INTIE/Resources/Ahene.doc* | <https://www.fig.net/resources/proceedings/2009>.

81 L. M. Wabineno, M. Musinguzi, P. Ekback, Land Information Management in Uganda: Current Status, August 2011; available at <https://cedat.mak.ac.ug/publications/land-information-management-in-uganda-current-status/>, accessed on 20<sup>th</sup> March 2018.

have been made without due regard to other interest holders on the land. Some land has been given away at a price which is below the market value.<sup>82</sup>

The effect of the above challenges and weaknesses has resulted in denial of rights to land owners, perpetrated fraud in handling land matters and made people to lose trust and confidence in the land administrators and managers. This has escalated violence, increased land conflicts, affected the use of land, and in some instances affected investment and development.

The review sought to establish: challenges faced by the government departments mandated with matters of land administration; how the shortcomings of the mandated agencies affect land utilisation, land administration and land management; and the level of awareness about the existence and operations of the institutions involved in land management and administration.

The issues for consideration were;

1. How effective are the current land management structures and administration structures/institutions?
2. What challenges are faced by institutions charged with land management and administration?
3. How effective is the current legal framework relating to land management and administration?
4. How can land management and administration be improved?

---

82 Section 69 of the Land Act, Laws of Uganda

## CHAPTER 3

# METHODOLOGY

### 3.0 Introduction

This chapter provides the methodology that was used to conduct the study. The chapter contains the study population, sample size, sampling techniques and procedures, data collection methods, data collection instruments, expected output and work plan.

### 3.1 Study design

The study was undertaken using both the qualitative and quantitative method of data collection. Qualitative design was chosen to help establish views, opinions and perception of the persons to be consulted. Qualitative data provided a rich and detailed understanding of the issues under study.

Land being a social phenomenon quantitative method was also used to create a better understanding and appreciation of the issues under study based on the number of respondents.

### 3.2 Study area

The study was carried out in 44 districts, which were divided into four regions as follows;

1. Eastern region (Napak, Mbale, Katakwi, Kotido, Abim, Moroto, Nakapiripirit, Soroti, Bukwo and Kween);
2. Western region (Hoima, Buliisa, Kibaale, Ntoroko, Kabarole, Isingiro, Bushenyi, Kiruhura, Kabale and Mbarara);
3. Northern region (Gulu, Amuru, Otuke, Lira, Alebtong, Adjumani, Agago, Yumbe, Nwoya, and Oyam).
4. Central region (Mukono, Mpigi, Wakiso, Kampala, Mityana, Rakai, Ssembabule, Masaka, Mubende, Kayunga and Luwero).
5. Kampala was chosen because it hosts most of the headquarters of the institutions consulted.
6. Kayunga, Wakiso and Mubende were chosen to represent the central region, and the two districts have a tenure system with lawful and bona fide occupants, they have various land conflicts, landlords owning big chunks of land and the existence of Buganda Land Board that administers land of the biggest cultural institution in Uganda.
7. Kagadi, Hoima and Bulisa were chosen because of the various land conflicts, existence of absentee landlords and the rampant land evictions.
8. Napak, Kotido, Abim, Moroto, Nakapiripirit and Kween Districts in the Karamoja region were chosen because they have an indigenous dispute

resolution mechanism that is largely accepted by the community. They also have a deeply rooted communal land ownership system.

9. Hoima, Bulisa and Nwoya districts were chosen because of the existence of oil exploration, with various land conflicts associated with numerous development initiatives.

### 3.3 Sample selection and population

The study population was drawn from representatives from government ministries, departments and agencies, non-government organisations, cultural leaders, landlords, tenants, the academia, private legal practitioners and the general public, with a total population of 11,000 respondents.

### 3.4 Data collection methods

Data was collected using key informant questionnaires. This enabled the respondents to independently respond to the issues under investigation.

**3.4.1 Documentary review;** literature relating to the subject under study included policy documents, legislation, research reports, position papers, court decisions and workshop documents. This was done in order to obtain a better understanding of the thematic areas under review.

**3.4.2 Consultations;** the Commission carried out consultations to gather views of the people on the proposals. This was intended to create a better understanding of the gaps in the law, the problems faced in the implementation and questions affecting land use, management, administration and ownership.

The consultations were conducted using structured questionnaires for key informant's household surveys.

Twenty key informants were interviewed in each of the nine districts selected for the study. The target individuals included the Resident Judge, Chief Magistrate, District Planner, Chairman Area Land Committee, Resident State Attorney, District Land Officer, District Surveyor, District Physical Planner, Chief Administrative Officer, Town Clerk, District Police Commander, OC-CID, Advocates, Subcounty chiefs, Financial Institutions, Traditional Leaders, Religious Leaders, Civil Society Organisations and Women Associations.

## CHAPTER 4

### FINDINGS AND ANALYSIS

#### 4.0 Introduction

This section presents the findings and analysis of the issues reviewed. The study was carried out in 44 districts with regional representation as follows;

1. in the central region, the study was conducted in Kampala, Kayunga, Luwero, Masindi, Kiboga, Wakiso, Mukono, Mityana, Rakai, Ssembabule, Masaka, Mubende, Kayunga and Luwero districts,
2. in the northern region, the study was conducted in Gulu, Amuru, Otuke, Lira, Alebtong, Adjumani, Agago, Yumbe, Nwoya and Oyam districts,
3. in the western region, the study was conducted in Hoima, Buliisa, Kagadi, Ntoroko, Kabarole, Isingiro, Bushenyi, Kiruhura, Kabale and Mbarara districts, and
4. in the eastern region the study was conducted in Napak, Mbale, Katakwi, Kotido, Abim, Moroto, Nakapiripirit, Soroti, Bukwo and Kween districts.

Of the respondents consulted, 2439 were from the central region, 1944 from the eastern region, 1970 from the northern region and 1967 from the western region. In terms of gender representation, 36% of the respondents were female and 64% were male.

The pie chart below shows the regional representation of the respondents.

*Fig. 1 Regional representation*

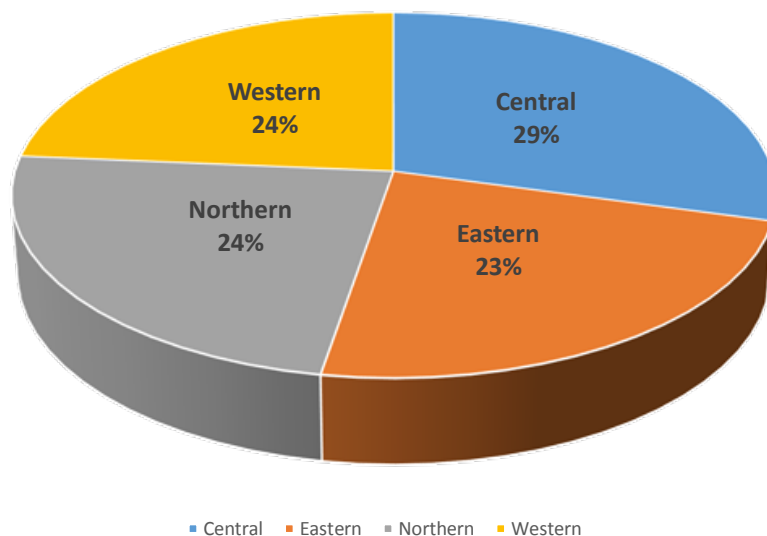
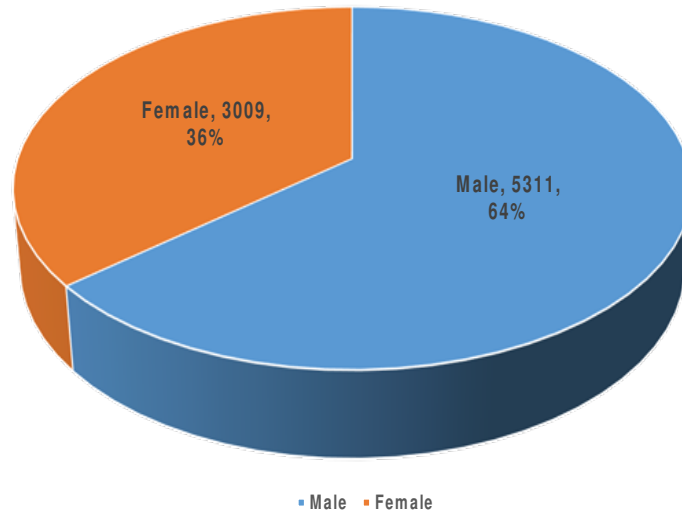


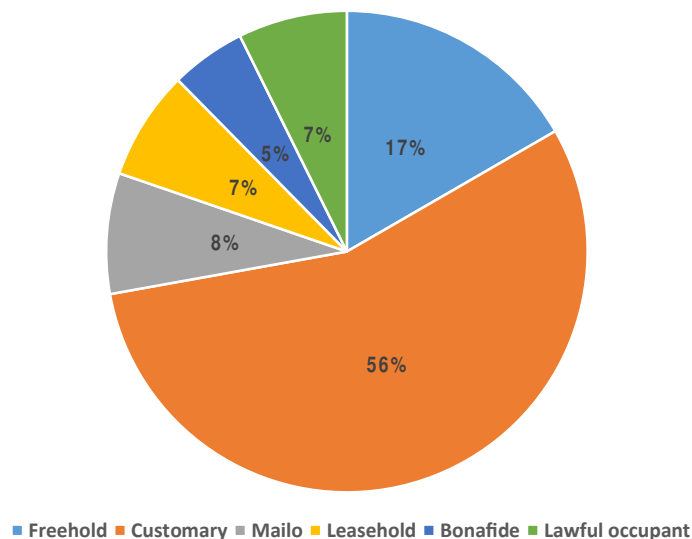
Fig. 2 Gender representation

### 4.1 Conflicting tenure rights and interests on land



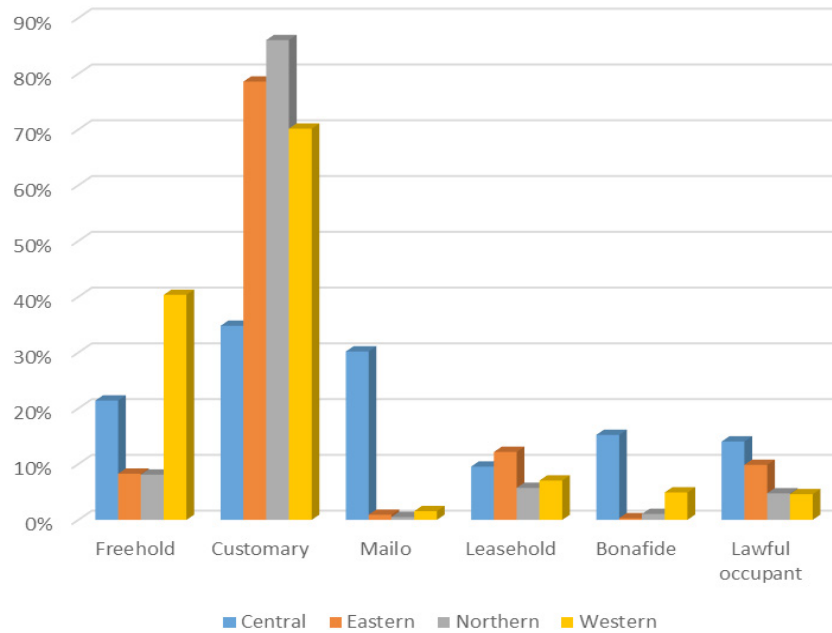
The study sought to establish the percentage and type of land ownership and the findings are indicated below in figs. 3 and 4.

Fig. 3 Land tenure systems in Uganda.



From the findings, customary land tenure is the most common form of land ownership, with the highest percentage in Northern Uganda. The second most common form of land ownership is freehold tenure, which is most common in western Uganda.

Fig. 4 Regional land holdings



The above illustrated forms of land ownership are in some cases affected by competing interests over the same piece of land through multiple, overlapping and conflicting interests and rights mainly under the *mailo* and freehold tenures which is common in the central region as illustrated in table 1.

Table 1 Types of land tenure holdings

	Central	East-ern	Northern	Western	Overall
Freehold	21%	8%	8%	40%	20%
Customary	35%	79%	86%	70%	66%
<i>Mailo</i>	30%	1%	1%	2%	10%
Leasehold	10%	12%	6%	7%	9%
<i>Bona fide</i>	15%	0%	1%	5%	6%
Lawful occupant	14%	10%	5%	5%	9%

From the table above, an overall 15% of the land is occupied by *Bona fide* and lawful occupants. This would imply that the *Bona fide* and lawful occupants are compounded on one of the four land tenure systems. This in itself is prone to conflicts. This further complicates the handling of land cases by the Judiciary in that they have to determine the competing interests over the same piece of land owing to the tenure system.

From the above illustration, it is evident that ownership of land is at the centre of the causes of conflicts on land.

Another form of land conflict manifests in communal land ownership under the Customary Land Tenure System. Under this system, the customary heir (usually the eldest son of the deceased) receives the bulk of the estate in trust for other beneficiaries and assumes some of the responsibilities of the deceased. The position of a customary heir was fashioned to ensure cohesion and continuity within a clan. However, experience has shown that this role is often abused, with many of those appointed instead using the property for their own gain. This has been exacerbated by the absence of effective customary mechanisms for checking the exercise of this function.

Land that is supposed to be owned communally is largely vast in nature, not titled and is sometimes encroached upon and subdivided by selfish individuals, thus causing conflicts on land. It is a common practice in Uganda for the customary heirs or clan leaders who are caretakers of such communal land, for instance burial grounds, to demarcate and sell off the land without consulting the community or clan members. As such, the well-intended provisions of Section 3(1), 15, 16 and 17 of the Land Act, are not upheld.

The conflict on land is further exacerbated by the fact that most of the land in Uganda is not registered. From the respondents interviewed, only 16% have had their land registered.

The National Land Policy Implementation Action Plan 2015/16-2018/19 (NLPIAP) proposes that the above issue can be addressed among others by reviewing the tenure regimes.

NLPIAP outlines proposals to revisit and review sections 22-26 of the Land Act Cap. 227 to ensure clear definition and distinction of family and individual land rights from communal rights under customary land tenure, distinguishing the rights and obligations of customary institutions vis-à-vis those of the community and individuals; and amendment of the Registration of Titles Act, Cap. 230 and the Land Act, Cap. 227 to strengthen the trusteeship role of customary institutions.

The NLPIAP further proposes the study and amendment of the Registration of Titles Act, Cap. 230 and Land Act, Cap. 227 to provide for registration of customary land held under trusteeship by traditional institutions or cultural leaders on behalf of communities in the names of trustees. The proposed law reforms are a deliberate Government effort to secure both individual and communal land rights.

In a bid to address the disparities in distribution of property, the NLPIAP proposes that to promote and protect women rights to land there is need to modify the rules of transmission of land rights under customary land tenure to guarantee gender equality and equity.



In a bid to mitigate the increasing land ownership and boundary disputes, Ministry of Lands Housing and Urban Development piloted systematic demarcation of land in hot spots/areas with many land disputes. For instance, ZOA, a Civil Society Organisation, has assisted the land owners in Alero sub county in Nwoya district to acquire land titles. Such initiatives if mirrored elsewhere will go a long way in solving the conflicting tenure on land.

Consequently, the NLPIAP proposed that a comprehensive study be conducted on customary tenure to evaluate ongoing pilots on systematic demarcation, starting with hot-spot areas such as:

- (a) areas with many conflicts;
- (b) the Albertine Graben;
- (c) areas where community land rights are threatened; and
- (d) Karamoja, etc.

The NLPIAP also planned for a feasibility study on the establishment of customary land registries and definition of the level(s) at which they should be established, designing and implementation of a pilot to test the issuance of Certificates of Title of Customary ownership based on a customary land registry in an appropriate part(s) of the country and review of the pilots on documentation of customary land tenure rules in Acholi, Lango, and Teso to assess their appropriateness, relevance and feasibility, to learn lessons and good practices, and adopt as appropriate.

The reforms presented above, if implemented will go a long way in securing land rights most especially under *mailo*, native freehold and customary land tenure system which will directly result into a decline in land disputes within the communities.

## 4.2 Land conflicts

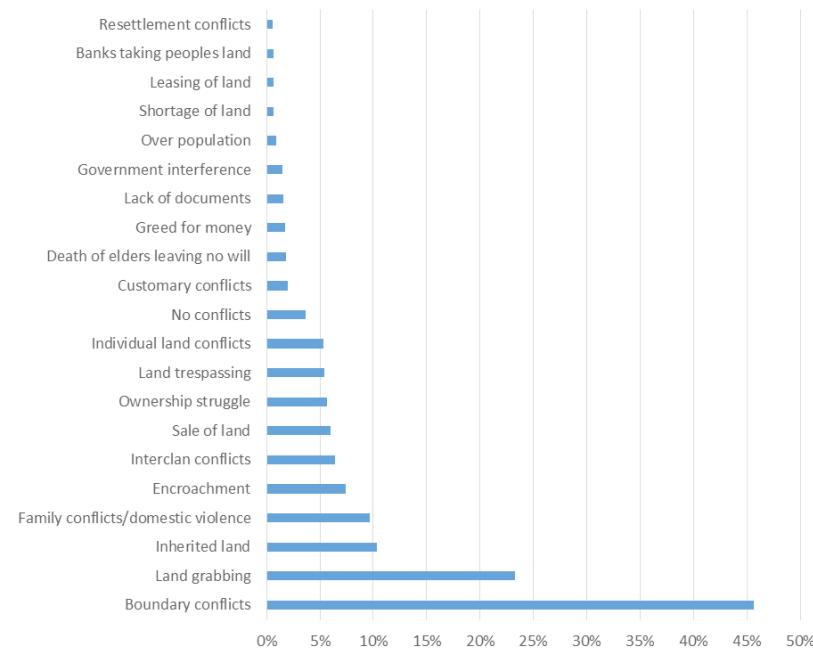
This part presents study findings and analysis of the following—

1. magnitude of land disputes in Uganda;
2. existing forms/nature of land disputes in the communities, and how these manifest;
3. causes of land disputes in Uganda; and
4. effects of land disputes in Uganda.

### 4.2.1 Magnitude of land disputes.

Findings indicate that boundary and land grabbing constitute the highest percentage cause of land conflicts across the country, while resettlement and mortgage defaulting conflicts constitute the least percentage as illustrated in fig. 6

Fig. 6 Magnitude of land disputes



#### 4.2.2 Forms of land disputes and how these manifest

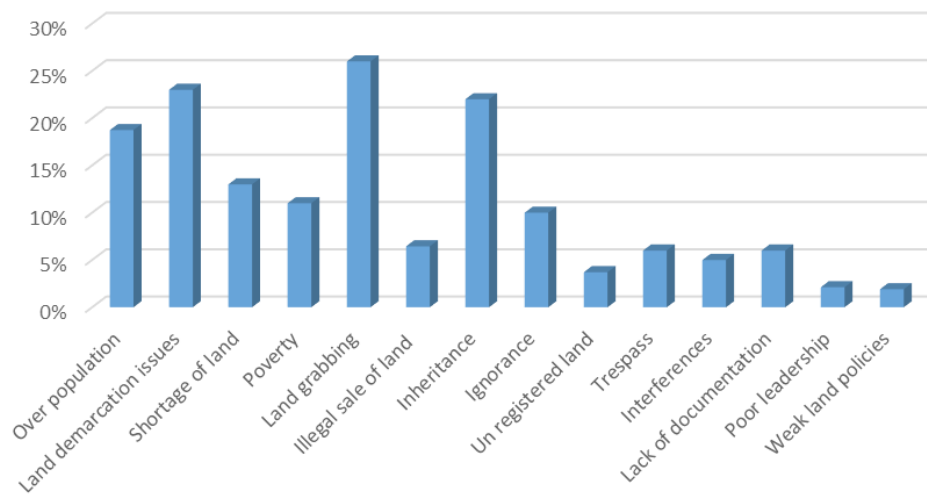
Land conflicts rank the highest amongst other forms of conflict in Uganda; they do manifest in different forms among which include; Land grabbing, land wrangles, boundary demarcation disputes, encroachment, Government Policy initiatives, claims over ancestral land, struggle for communal resources and boarder conflicts among others.

The study revealed that the most common form of land disputes within the selected districts include boundary conflicts (46%), land grabbing (23%), family disputes (10%), disputes arising from inherited land (10%), encroachment (7%), inter-clan conflicts (6%), conflicts arising from sale of land (6%), ownership struggles (6%), land trespassing (5%), individual land conflicts (5%) and customary land conflicts (2%). It is notable from the findings that boundary conflicts and land grabbing emerged the highest in terms of ranking.

#### 4.2.3 Causes of land disputes

From the findings, land grabbing, land demarcation, population growth and inheritance constitute the greatest causes of land conflicts in Uganda, while the least causes of conflict are weak land policies and poor leadership as illustrated in Fig. 7

Fig. 7: Most common causes of land conflicts in Uganda



#### 4.2.3.1 Land grabbing

The most common cause of land conflict was identified as land grabbing, which constitutes 25% as illustrated in fig 7.

Findings reveal that land grabbing in Uganda is perpetuated by individuals. Some examples on land grabbing in Uganda include Bukaleba forest evictions, Mt Elgon forest, Mabira forest and Luwunga forest in Kiboga<sup>83</sup>; in other instances, it is blamed on officials working in the land registry who double issue land titles to different parties.<sup>84</sup>

According to Otim and Mugisa, land related conflicts between government of Uganda and communities are one of the most complex of all land conflicts involving huge pieces of land and people from mainly outside the region as a result of government programmes such as those under UWA, allocation of land to investors and companies, and decisions made in the name of 'holding in trust for the people<sup>85</sup>, resources and land to be reserved for the common good of the citizens'.<sup>86</sup>

In a bid to rationalize national resources government has gazetted certain areas for specific programmes like game parks and forest reserves for national benefit. Some of these include: the gazetted areas in Mbale, most of Bininy sub-county in Kween District, refugee resettlements like Kyangwali in Hoima District, Nakivale in Isingiro District, Achol-Pii Refugee Settlement in Agago District, Bidi Bidi Refugee

83 National Association of professional Environment (FOE-Uganda); A study on land Grabbing cases in Uganda, April 2012, Available at [https://reliefweb.int/sites/reliefweb.int/files/resources/Full\\_Report\\_3823.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_3823.pdf); accessed on 5th May 2018; at pagess 24,25,26.

84 Ibid at 24.

85 Objective 13 of the National Objectives and Directive Principles of State Policy –Constitution of the Republic of Uganda 1995.

86 David Otim and Mugisa Police Charles: Beyond the reach of the hoe: The struggle for land and minerals in Northern Uganda. Safer World, April 2014

Settlement in Yumbe District, Kiryandongo Refugee Settlement in Kirandongo District and Kyaka II Refugee Settlement in Kyegegwa District, among others. In Kasese District, government holds 65% of the land that has been transformed into game parks and game reserves, leaving the Bakhonzo, Basongora and Banyabindi occupying 35% of the remaining land.<sup>87</sup>

In general, where government has intentions of developing land as government or through foreign investors, this has given rise to a substantial level of tension with a high chance of the tension erupting into violence. Such for instance is the case In Amuru, Buliisa, Hoima districts and any other areas where there are efforts at developing infrastructure.

Related to the above were allegations of corruption and bribery allegedly perpetrated by officials at institutions handling lands disputes,<sup>88</sup> which includes the LC Courts, District Land Boards, Police and the Judiciary. According to respondents, even the traditional leaders who used to adjudicate land matters with integrity and based on their indigenous knowledge were reported to have been affected by the vice.

#### **4.2.3.2 Boundary/border conflicts arising for land demarcation**

From the findings, boundary and border disputes constitute 22% of the causes of land conflicts in Uganda. These manifest at four levels, namely; Inter-personal boundary disputes, inter-sub county border disputes: Inter-district border disputes, and to a very small extent, international border disputes.

Boundary/border conflicts are characterised by lack of clear marking of boundaries of the land in question usually between two or more persons. The marks used include mark stones, trees, existing features such as rivers, valleys etc. Such features easily resolve land wrangles onsite controlling the disputes that may arise.<sup>89</sup> However, this well intentioned act/ process of land demarcation has continued to be one of the major causes of land conflicts. This situation is very common in the North, North Eastern and West Nile regions where there was prolonged armed struggle that confined many to camp life.

The end of the LRA war has reinforced the importance of land in different ways. Prior to the war, people in northern Uganda had owned cattle as their major source of livelihood. The loss of their cattle upon their forced displacement resulted in a new focus on land as a primary income opportunity. At the same time, when the people of northern Uganda returned from IDP camps after 20 years of war, they found that the physical features that they had formerly used to identify the boundaries of their properties had changed or were destroyed altogether.

87 Rugadya A. Margret. Escalating land conflicts in Uganda. A review of evidence from recent studies and survey. Prepared for the International Republican Institute (IRI) and presented at the Uganda Round Table Foundation. June, 2009, pg 14.

88 This was observed by respondents in all the 44 districts visited.

89 Demarcation: A tangible solution to the rising land disputes. <http://ulaug.org/files/downloads/ULA%20Newsletter%20May%202015.pdf>

To exacerbate this, most of the elders who knew the boundaries had died in the camps and the young people, some of whom were born in the camps, did not know their parents' land, let alone the boundaries. In other cases those who returned from the camps earlier than others, sometimes did not settle on their exact original pieces of land. Others took up more than they originally owned or chose fertile pieces of land that had not been theirs before the war.<sup>90</sup>

Boundary disputes between local Governments are common in Uganda and are partly attributed to poor coordination and communication between Ministry of Local Government and Ministry of Lands, Housing and Urban Development (MoLHUD). This is an administrative issue that contributes to the increasing boundary disputes between District Local Governments and even individuals. Examples of Local Governments with such problems include Amuru and Adjumani, Bunambutye in Bulambuli District and Kapchorwa District.

Consequently, this has resulted into complex multiple claimants for the same piece of land.

#### 4.2.3.3 Inheritance

From the findings, land conflicts resulting from inheritance constitute 21%. A number of such cases stem from succession related issues like lack of wills, family disagreements, domestic violence, gender discrimination and customary practices, all of which cause ownership struggles.

The customary practice of collective ownership of land is reported to promote conflict as a result of dissatisfaction with distribution, access and control processes. Customary land wrangles in Uganda are common in the North, where Lule reports that land conflicts account for more than 80% of cases, in the East and West Nile sub- regions of Uganda where the customary land tenure system is predominant.<sup>91</sup>

A recent study<sup>92</sup> recorded a total of 27% percent of women as landowners who state that they have acquired land through marriage. It is however highlighted that the land rights that many of these women enjoy depend on the stability of their marriages. They risk losing their land rights in the event of divorce or on the death of their husbands.<sup>93</sup> At times when these widows sell off what they know is rightfully theirs, legal battles emerge in relation to ownership of the land. This is further coupled by the fact that most land in Uganda is not registered thus deepening the problem. The other claimants from the late husband's relations will claim that it was family land or communal land and they can easily defeat the widow in a Court of law, and such incidents also contribute to escalation of land cases.

90 David Otim and Mugisa Police Charles: Beyond the reach of the hoe: The struggle for land and minerals in Northern Uganda. *Safer World*, April 2014, pg 2.

91 Jeff Andrew Lule in the *New Vision* of 12/11/ 2014. Available at <https://www.newvision.co.ug/new.../land-wrangles-account-80-northern-uganda>, accessed on 8 Feb 2018.

92 Doss et al: *Women, Marriage and Asset Inheritance in Uganda*: Chronic Poverty Research Centre

93 Study report on Succession in Uganda, Page 27. Published by Uganda Law Reform Commission., 2017

Time and again persons are appointed as administrators by Court, to administer estates on behalf of other beneficiaries. Administrators of estates on some occasions undertake actions which may not be in the interest of the beneficiaries. For instance, if administrators sell an estate that they are managing without consulting and seeking consent of the beneficiaries, the beneficiaries may get embroiled in legal battles with the purchasers.

#### **4.2.3.5 Population Increase and infrastructural development**

The ever increasing population, coupled with urbanization was noted as accounting for 17% of the causes of land conflicts in Uganda.

A growing population will always impact on land that is a static resource. According to the Uganda Bureau of Statistics report, 2016 the population of Uganda as of 2014 was 34, 634, 650<sup>94</sup> while in 2002 it was 24, 227, 297. The growing population exerts pressure on land from time to time leading to landlessness which has contributed to the encroachment on wetlands, forest reserves, land ownership and boundary disputes.

Respondents also revealed that the proliferation of big infrastructural projects such as major road construction in many parts of the country contributed to the increasing cases of land disputes due to anticipation of compensation from Uganda National Roads Authority. In addition, some of the road construction projects were done without adequate consultation of the affected communities, a factor that escalated the disputes.

#### **4.2.3.6 Institutional weaknesses**

The weaknesses inherent in institutions charged with land administration in Uganda are another factor leading to land disputes. The Area Land Committees for instance were reportedly not properly equipped with knowledge on the laws and procedures of resolving the disputes.

While civil society tries to fill in some of the gaps created by the weak state institutions, such interventions, though very critical, are short-lived and not sustainable as they are reliant on donor funding.

The lack of coordination between the sub county, the district and the local community in relation to land transactions leads to land disputes.

The delay by the courts of law to dispose off land cases was noted as leading to their persistence. Most respondents alleged that court proceedings were too slow in adjudicating land matters. Some cases reportedly took close to ten years before being disposed, escalating already existing conflicts as people tended to take the law into their hands. Some respondents complained that court tended to

94 Uganda Bureau of Statistics 2016, *The National Population and Housing Census 2014 – Main Report*, Kampala, Uganda, pg.8.

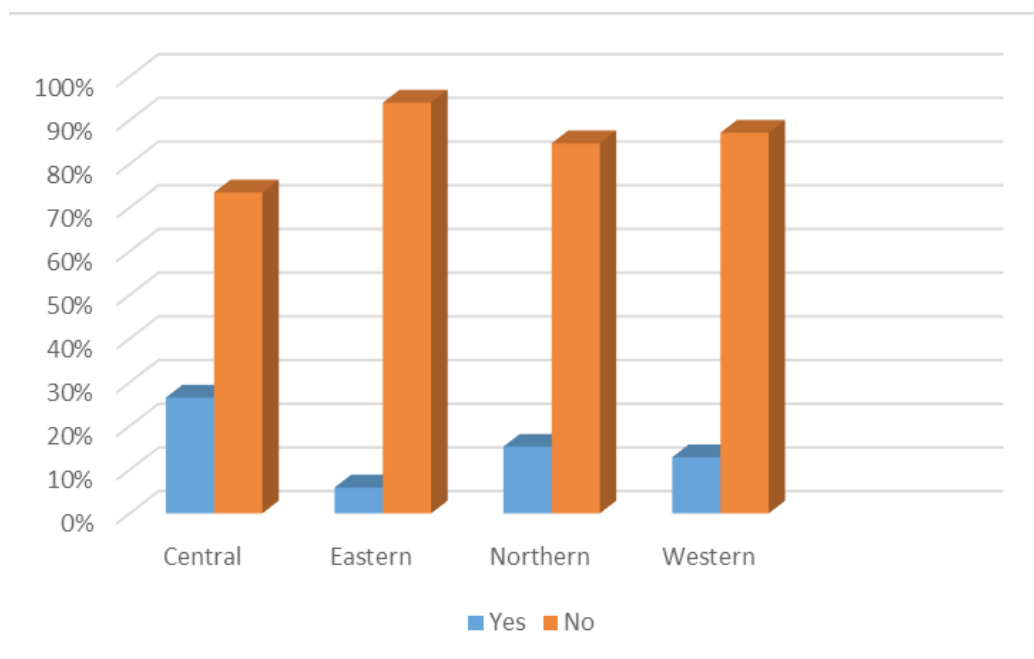
favour those who were more affluent compared to the ordinary poor who could not afford the court fees. On their part, the judiciary claimed that the manpower and facilitation were insufficient, causing them to be overwhelmed by cases.

The other related concern expressed by respondents was the reluctance by the government to intervene at the early stages of the disputes. The respondents also felt that the government was unwilling to take a clear position on some of the disputes.

#### 4.2.3.6 Poor documentation of past land transactions

From the findings, only 16% of the respondents had had their land registered. Figure 8 further shows that the highest percentage of land registered is in the central region, while the lowest level of registration was recorded in eastern Uganda.

Fig: 8 Registration of land



Some of the reasons advanced for the failure to register the land were the cost, lack of knowledge, the lengthy processes involved, inaccessibility of institutions, the customary nature of ownership and corruption tendencies.

The absence of documentation, relating to ownership of land does curtail registration, further facilitating land conflicts. This has in some cases amounted to claim of lands originally donated or gifted by deceased owners to churches and schools by their descendants.

#### 4.2.3.7 Emerging causes of conflict.

The discovery of minerals in most parts of the country was also raised as an issue leading to land disputes. The respondents in Bunyoro region expressed concerns over the processes of licensing companies which they noted were mostly top-bottom, with limited regard for the voices of the ordinary land owners.

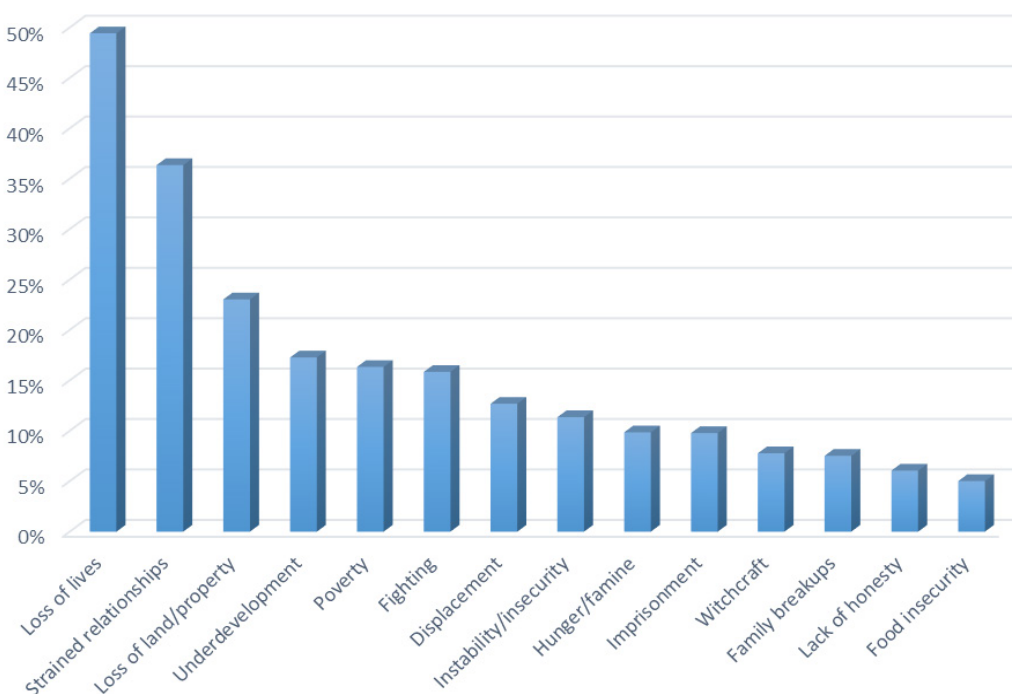
According to them, the various demands on the land by speculators and members of the affected communities have triggered land disputes especially as to where the Central Processing Facility (CPF) would pass.<sup>95</sup>

This was the scenario in Amuru district, where the discovery of minerals had also caused tension and suspicion among the community members who feared that government would take away their land.

#### 4.2.4 Effects of land conflicts

From the findings, the salient effects of land conflicts included loss of lives (48%), strained relationships (36%), loss of land and other property (22%) and underdevelopment (17%), while the least significant were family breakups (6%), lack of honesty (5%) and food insecurity (4%).

Fig. 9 Effects of land conflicts



95 Respondent from Bunyoro



Findings indicate that where there are many land conflicts, social stability within society is affected, as land conflicts undermine trust and increase fear and suspicion often between formerly close people such as neighbours and family members.

Violent land conflicts or simply the fear of falling victim to them can also have a traumatizing effect on those who are or feel at risk. In addition, whenever State land is allocated illegally it generally affects the nation's budget negatively and often results in ecological destruction or social exclusion.

According to Wehrman (2008:22)<sup>96</sup> whenever there is a land conflict, someone suffers economic consequences. In extreme but not rare situations, people find themselves landless and/or without shelter. In the case of a farmer, this often includes the loss of his/her production base.

Tripp (2004:43)<sup>97</sup> further acknowledges that land ownership conflicts have negative effects on individual households as well as on the nation's economy. They increase costs, slow down investment, can result in the loss of property for a conflict party and reduce tax income (land tax, trade/commercial tax) for the state or municipality.

The effects are vast and have far reaching implications, including loss of life, loss of land and property, strained relations, underdevelopment among others. These impact on the quality of life, peace and harmony, and are likely to amount to high crime rates and increased case back log.

Whereas the government of Uganda has put in place various legal, policy and institutional measures for the administration of land in Uganda, reports of land disputes are still prevalent. Thus, key questions of concern remain why these disputes persist despite the availability of legislative and institutional measures to address them; whether there are gaps in the existing legal frameworks or there are weaknesses with the Implementation of land administration policies and legislation.

### **4.3 Dispute resolution mechanisms**

This part presents study findings and analysis of the following;

1. mechanisms for resolving land conflicts;
2. the effectiveness of the forms of dispute resolution identified; and

96 Wehrmann Babette (2008) Land conflicts a practical guide to dealing with land disputes. Available at <https://www.commdev.org/pdf/publications/A-practical-guide-to-dealing-with-land-disputes.pdf>; accessed on 10<sup>th</sup> March 2018

97 Tripp, A.M. 2000. The politics of women's rights and cultural diversity in Uganda. Paper part of UNRISD's work for the Beijing +5 review: Gender justice, development and rights: Substantiating rights in a disabling environment.

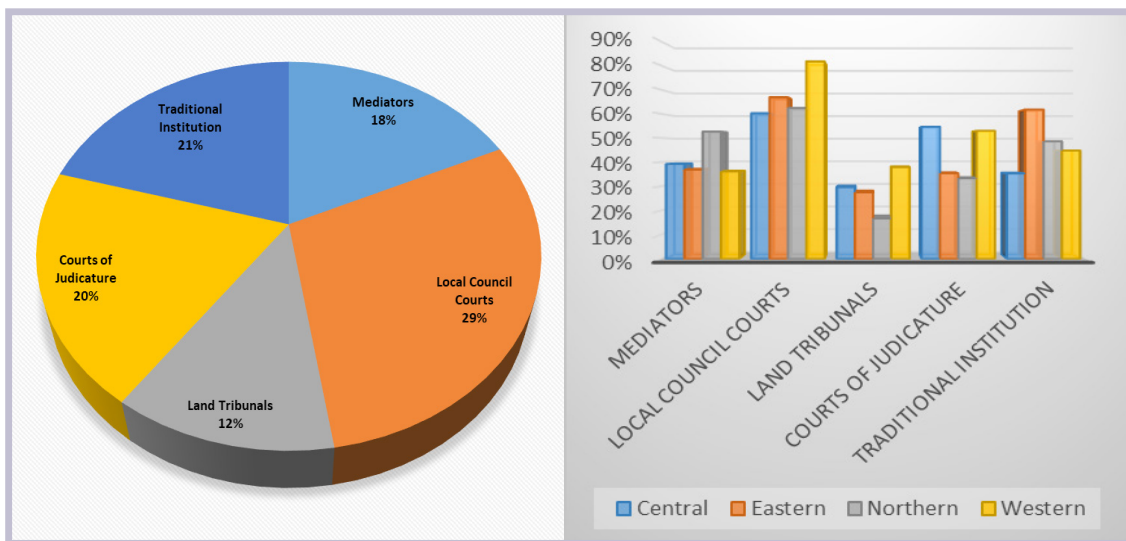
3. the challenges faced by the mechanisms.

The purpose of this was to identify the forms in which forum shopping manifests, establish the capacity of the institutions charged with adjudication and settlement of land disputes, establish the impact of the existence of an ambitious institutional design to planning, utilisation, management and administration; and identify other dispute resolution mechanisms that exist outside the law within the communities.

**4.3.1 Mechanisms for resolving land conflicts**

*Fig.10 Nationally preferred*

*Fig. 11 Preference per region.*



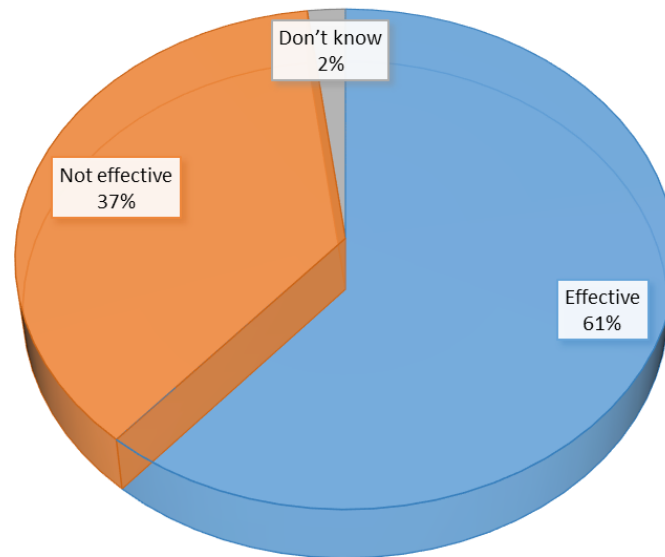
From the above, it is evident that the most common mechanism for resolution of land conflicts is the Local Council Courts, followed by the traditional institutions, the courts of judicature, mediators and land tribunals in that order as illustrated in figure 10. This similar trend is replicated at the regional level as illustrated in figure 11.

The actors involved in resolving land disputes play various roles such as community policing, mediations and reconciliation, arbitration of land matters, as well as education or sensitisation of the public about land laws and policies, among other roles.

**4.3.2 Effectiveness of forms of dispute resolution**

Study findings indicate that 61% of the respondents find the mechanisms effective, 37% considered the mechanisms not effective and only 2% could not state whether they were effective or not as illustrated in fig. 12.

Fig. 12: Effectiveness of the dispute resolution mechanisms.



While there is satisfaction with the use of the mechanisms listed above for handling land related disputes, there are no readily comprehensive and disaggregated statistics of cases handled, especially in the mediators, traditional institutions and the local council courts.

It is important to note that most of the land related cases reported to police were criminal in nature as they involved matters like arson, criminal trespass and assault.

While the judiciary was known as a key institution in resolving land disputes, the findings of the study indicate not that cases actually end up in the courts.

#### 4.3.1.1 Local Council Courts

According to the respondents, the Local Council Courts play a vital role as actors in land disputes and conflict resolution in communities in Uganda (29%). Many communities have trust and faith in them. They are considered indispensable in the administration of justice. Their role in dealing with land matters in communities can be traced back to their establishment.

Some respondents noted that the Act lays down eligibility criteria such as residence in the area in which the court operates, good moral conduct, ability to speak the commonly used language in the area, and not being a member of parliament or local council,<sup>98</sup> which makes them more acceptable in the communities. Another respondent noted that members of village executive committees are elected because of their popularity, kindness, age, compassion, family background and

98 See sec 5 Local Council Court Act, 2006, , Act No. 13 of 2006, Laws of Uganda.

tribe among others, and not necessarily because of their ability and wisdom to resolve land disputes.<sup>99</sup>

However, it was highlighted during consultations that the procedures followed in the LCCs fall short of satisfying the requirements of fairness.

Below are some of the concerns raised by interviewees about the operation of LCCs:

- (a) *“Most LCCs do not have registers for the cases they handle. Neither do they number their cases serially. This makes it very difficult to trace a case for any reason (say for appeal or research purposes).<sup>100</sup>*
- (b) *In general LCCs do not keep proper records of proceedings. From the few records sampled by the author, it was clear that the facts of the cases and evidence tendered at the hearings were not accurately and systematically recorded and kept.<sup>101</sup>*
- (c) *In cases where the courts conducted a locus in quo<sup>102</sup>, the case file showed a list of people in attendance only but no record of proceedings, yet the evidence adduced during the proceedings was relied upon in the final decision”.<sup>103</sup>*

All these inadequacies have serious implications for the fairness of the decisions handed down by these courts and present difficulties for the conduct of an appeal to the Magistrates Courts. Because of lack of proper record keeping, it becomes inevitable for the appeal court to rehear the case *de novo*<sup>104</sup> and conduct a locus in quo afresh, thereby incurring further costs and exacerbating case backlogs in the Magistrates Courts.

This is further compounded by the fact that the Local Council Courts in place during the study were not legally constituted and as such their decisions had no binding effect in law.

The study established that parties that lost cases at the Local Council Courts level went on to the courts of judicature and further increased the case backlog. It was also established from the study that the courts of judicature never called in the records of the previous handling of the case, may be because they were not recognised, and neither were members who attended these courts summoned to testify in courts, thus creating a missing link in the administration of justice.

99 Respondent in Gulu District.

100 Respondent in Kampala.

101 Respondent in Kampala.

102 'Locus in quo' is a Latin word meaning '[t]he place where an event allegedly occurred.' 114 Respondent in Kampala.

103 Respondent in Kampala.

104 This means "afresh"

As will be noted later, the visit of *locus in quo*, though mandatory as per the Chief Justices' practice directive, which could solve the problem is not always done because of limited funding to the judiciary.

LC1 courts do not have legal jurisdiction for the trial and determination of matters relating to land. The jurisdiction that they had under section 10(1)(e) of the Local Council Courts Act was set aside by the Court of Appeal decision in the case of *Nalongo Burashe Vs. Kekitiibwa Mangadalena*, Court of Appeal, Civil Appeal No. 89 of 2011, which clarified that the jurisdiction of land matters lies with the LC II courts.<sup>105</sup>

In conclusion, it is evident that Local council (LC) courts are nearer to the people but lack capacity to effectively dispense justice in land matters. They handle cases without the necessary jurisdiction or quorum and records management is almost nonexistent. Once any such irregularities are raised at the appellate level of the Chief Magistrate's court, a retrial is automatically ordered. There is no linkage between the Local Council Courts and the Courts of Judicature.

#### 4.3.1.2 Courts of law

From the findings, 20% of the respondents stated that courts of law form a component of dispute resolution when dealing with land matters. However, most of the respondents had reservations about how the court works in terms of filing documents and court procedure.

According to a respondent, the process of tendering documents in court is challenging. A litigant may possess documents such as minutes of clan meetings or agreements that are vital to his/her case but may testify about them without tendering them in court. A magistrate who is lenient may ask for such documents and record them but a rigid one will ignore this.<sup>106</sup>

A respondent observed that when the poor come to court, they do not know what to do and are unable to engage lawyers; and this is the reason why people say justice is for the rich. *The rich engage lawyers and take advantage of the situation to bulldoze the poor. Sometimes, the poor use the services of court clerks who draft documents poorly and when they come to court, we follow the procedure of the law and the matter is dismissed, because, according to Article 126(2) of the Constitution, courts have to deliver justice subject to the law.*<sup>107</sup>

According to a judicial officer, procedural law in civil cases which include land cases, where rules allow parties to make endless applications, makes court move in circles and a lot of time is wasted.<sup>108</sup>

105 Section 76A of the Land Act provides that "the parish or ward executive committee courts shall be the courts of first instance in respect of land matters."

106 Court clerk, in Sembabule District

107 Judicial Officer in Masaka District.

108 Magistrate from Mukono District

The other challenge is that there are no funds for visiting the locus and staff are underpaid. A respondent stated that some evidence brought before court is inaccurate hence the need to visit the locus. *“I have visited locus only in three cases but what you find on ground is contrary to what is on court records.”*<sup>109</sup>

The law requires that before a land matter is concluded, locus must be visited unless sufficient cause is shown as to why locus must not be visited.<sup>110</sup>

The cost of visiting locus is supposed to be borne by the government but, most times, the litigants are told to pay for such or wait for government funds which normally take too long if at all. Some of the litigants are too poor to raise money for locus visit and some cases have stopped at the level of visiting the locus for that reason. It is important to note that some of the land disputes arise in hard to reach areas that are impassable especially during rainy seasons.

*“If you have to visit disputed land in a village in Sembabule district, you have to do it during the dry season because if it starts raining, even if you have a four wheel drive car, you will get stuck.”*<sup>111</sup>

According to a judicial officer, they “sometimes give long adjournments. This shows lack of seriousness in managing cases. Some judges and magistrates are lazy; they just mention cases and adjourn. Even when you have witnesses, he/she will not listen to you. This lack of seriousness is caused by ineffective supervision on the part of the courts. The court should adjourn, may be the following day.”<sup>112</sup>

Respondents also emphasized that the judiciary is thin on the ground due to inadequate personnel who cannot handle all cases registered.

It was also noted that land cases have increased due to population increase; there is too much pressure on land yet judicial manpower is not increasing. Also, the respondents stated that LC courts are not legally constituted and people do not know the hierarchy of the court system.

In addition, court business in Uganda is conducted in English with a clerk interpreting in the local language. Majority of poor litigants are illiterate and do not understand English. The interpretation by clerks is sometimes misleading especially where the presiding magistrate does not understand the local language. The court clerk sometimes does it intentionally out of influence or may not find appropriate words in the local language. The question is: can court rule fairly in any matter where submissions are misinterpreted?<sup>113</sup>

109 Magistrate from Sembabule District

110 Chief Justices' Practice Directive

111 Court clerk, Sembabule District

112 Magistrate from Masaka District

113 Lawyer, Mubende District

Another issue that arose during consultations was in relation to enforcement of court orders. According to a respondent, “The final steps to enjoyment of fruits of litigation are simply annoying. How do you get your land back from a grabber? After winning a case, court issues an order for vacant possession but the other party may stubbornly refuse to leave the land. In this case, one needs a court bailiff to enforce the order. Before the bailiff does the work, he requires clearance from the police, let alone interference from other organs of the government such as Resident District Commissioners. As if procedural challenges are not enough, our courts are contaminated with corruption yet most land cases are worth a fortune. When a judicial officer is compromised, all you expect is injustice. The lengthy, expensive, intricate and tedious process of arriving at justice casts the poor as misfits in the formal justice system.”<sup>114</sup>

All in all, in the quest for litigants (complainants) seeking justice, against violation of their rights, they face various challenges which require great agility, resilience and financial resources that many vulnerable groups and individuals lack. The formal court process in Uganda, more often than not, leaves the poor frustrated, confused and jittery. The situation is worse in land matters since the existence of the majority of the world’s poor is directly dictated by access, ownership and control over land.

Nevertheless, courts of law in Uganda have jurisdiction to entertain all actions arising out of or connected to any land transactions.

#### 4.3.1.3 Land Tribunals

The use of tribunals in resolution of land disputes accounts for only 12%, according to respondents. It is probable that this low level of its use resulted from the transfer of their powers to the Chief Magistrates courts by the Chief Justice.

Due to their non operation, respondents hardly had anything relevant to say about Land Tribunals.

#### 4.3.1.4 Traditional Institutions

Findings present the use of Traditional institutions at 21%. According to a respondent in Arua, traditional institutions provide better solutions than the other systems.<sup>115</sup>

In an earlier study conducted by Uganda Law Reform Commission,<sup>116</sup> a respondent noted that;

*“there is high preference for local structures especially local leaders because they understand the community”.*<sup>117</sup>

114 Police, Wakiso District

115 Key respondent in Arua District.

116 Study on Informal Justice System, unpublished. 2018

117 A key informant in Kayonza Central, Isingiro District.

*“People know and trust them, they know the genesis of their disputes and are able to properly guide on the best way to amicably resolve the disputes”<sup>118</sup> and*

*“they provide more knowledge and guidance in the community.”<sup>119</sup>*

Cultural leaders are therefore responsible for upholding and promoting cultural norms which are driven by ancestral values. These values include equity, honesty, unity in performance of cultural rituals and ceremonies. Cultural leaders are also repositories of the clan’s history,<sup>120</sup> resolve conflict through building consensus, mediation and reconciliation; arbitrate over land disputes especially where customary land tenure prevails; promote peace and unity and uphold justice within communities; ensure social protection in as far as access to food and shelter are concerned. More so, they liaise with other authorities, both government and non-government entities to ensure effective implementation.<sup>121</sup>

They also support kinsmen, help mediate between them, and interpret laws, where they have capacity.<sup>122</sup> Among the Langi, their key role is to protect the land that belongs to the clan, settle land disputes within and outside the clan; and give permission to clan members who have good reasons for selling part of their land.<sup>123</sup> Among the Pokot, cultural leaders settle disputes concerning occupation of fertile land and reconciliation of parties.<sup>124</sup> Among the Batooro, cultural leaders play a uniting, advisory and social protection role within the community. They discipline errant clan members (including expelling someone from the clan after consultation) and solve disputes related to land and family wrangles.<sup>125</sup>

Under section 88 of the Land Act, traditional authorities can determine disputes over customary tenure or act as a mediator between persons who are in dispute over any matters arising out of customary tenure.

It is against this background that traditional institutions are considered an invaluable resource in handling land disputes in communities in Uganda.

#### **4.3.1.5 Mediators**

The use of mediators in dispute resolution accounts for 18% of the responses given. An earlier study established that the use of mediators was one of the most common mechanisms of dispute resolution under the informal justice system.<sup>126</sup> This was attributed to the fact that mediation helps parties to reach a peaceful

118 Chairperson Kucwiny Subcounty, Nebbi District.

119 Ssesanga Hamuza, Head teacher Green Hill College, Isingiro District

120 Also known as custodians of cultural information.

121 The Uganda Clan Leaders Charter. Cross Cultural Foundation of Uganda 2013.

122 While some leaders are educated, others are appointed to these positions of authority by virtue of their knowledge, respect and the trust the people have in them.

123 The Uganda Clan Leaders Charter. Cross Cultural Foundation of Uganda 2013, Pg 56

124 The Uganda Clan Leaders Charter. Cross Cultural Foundation of Uganda 2013, Pg 68

125 The Uganda Clan Leaders Charter. Cross Cultural Foundation of Uganda 2013, Pgs 78 & 79

126 A Study on Informal Justice Systems in Uganda by Uganda the Uganda Law Reform Commission (2018).



resolution of the matter, is participatory and strives to achieve harmony among others.

In Agago District for instance, a respondent observed that “most land cases are resolved through mediation. The leaders only help the parties to find peaceful means to resolve the problem.”<sup>127</sup> In Ngora District, a respondent observed that “our role is to facilitate agreement between the parties. We do this by encouraging them to work towards peaceful solutions conclusively,”<sup>128</sup> while in Amuria District another respondent observed that “the role of the informal justice structures is simple. All that is done is to make sure that the two sides are in discussion. We inquire about progress, we are constantly speaking to them and encouraging them to conclude the matter. This process may take long but we remain patient for the good of the parties and the community.”<sup>129</sup>

A study conducted by JLOS in 2013 established that mediation is widely applied across the country.<sup>130</sup> The study further recommended the establishment of the wrongs for which mediation should be applied as an intermediary intervention and those for which it may be applied as an end in itself.

From the above illustration, it is evident that mediators are more likely to promote harmonious dispute settlement due to the nature of peaceful conflict resolution.

#### **4.3.4 Challenges in using the available mechanisms in addressing land disputes**

The study revealed that the challenges faced in using the available mechanisms in addressing land disputes include; bribery and corruption (31%), delay in decision making by courts of law (17%), biasness (12%), lack of/poor facilitation of institutions mandated to address land disputes (12%), high costs of using these available mechanisms (9%), lack of knowledge of land laws by persons/institutions mandated and involved in addressing land disputes (7%), bureaucracy (6%), lack of honesty by persons/institutions mandated and involved in addressing land disputes (5%), long court processes (3%), and lack of awareness of their rights as land owners (3%), among others, as illustrated in fig. 13.

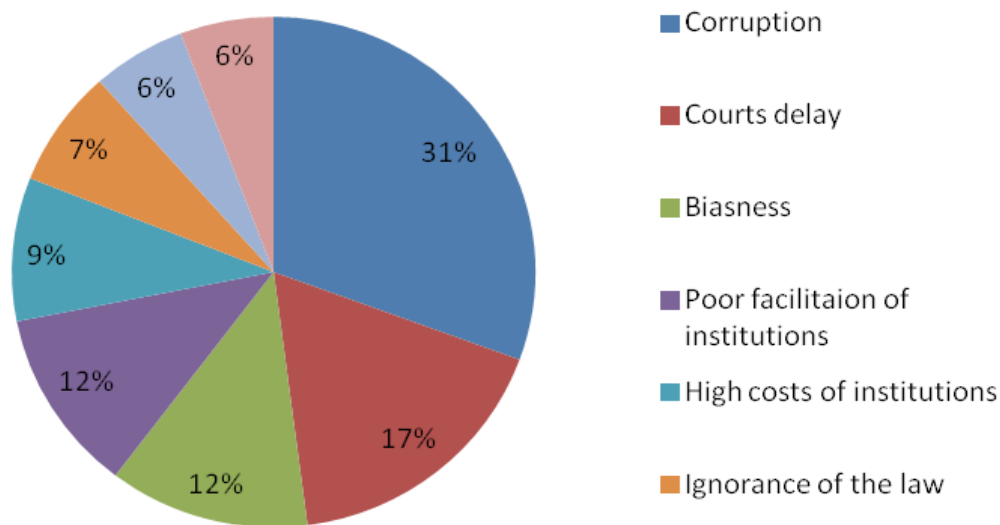
127 A key informant in Omot Subcounty.

128 An elder in Tiling village , Kobwin Subcounty -Ngora District

129 LCIII Akileng Parish, Obalanga Subcounty.

130 Justice Law and Order Sector Study report on Transitional Justice, Truth Telling and National Reconciliation (May 2013:71)

Fig. 13 Challenges posed by dispute resolution mechanisms



From fig. 13, it is evident that corruption is the greatest challenge to land dispute resolution. This manifests in form of land grabbing, fraudulent acquisition and sale of land, manipulation of buyers among others. This in effect results into more land conflicts and consequent loss of faith in the judicial system.

Relatedly, the very slow process in handling the issues referred to courts made people lose faith in them. The periods that land cases take to be resolved in courts of law were so long to the extent that they transcend generations. In Mityana District, a respondent observed that “land cases take so long in court that one would have produced children and grandchildren by the time the case is handled”.<sup>131</sup> This situation is worsened by the inaccessibility to the justice institutions due to long distances country wide and lack of resources to pay for legal services.

Poor facilitation of institutions mandated to address land disputes was another challenge raised during the research. The inadequate number of judicial officers in the regions where the research was conducted (for example in the northern region) as well as inadequate facilitation had made some institutions non-functional like the land tribunals and non existence of elected local council members during the period when the study was conducted. This lack of facilitation has greatly affected the visit to the locus quo which is key factor in determining land matters. All these cause delays in dispensing justice to the affected parties.

Respondents noted that institutions mandated to address land disputes pursued different interests in some instances<sup>132</sup>. The lack of coordination caused duplication with different government institutions handling the same matter and sometimes

131 Respondent from Mityana District.

132 Source

issuing conflicting and contradicting orders and documents. In Abim District, an elder observed that the courts do not recognise the decisions of traditional institutions in solving land disputes, nor do they invite or entertain them in court to testify on matters that they previously handled.

#### 4.4 Land use planning

From the findings, 58% of the respondents use their land for agriculture, while 3% of the respondents land remains unutilised. This trend is replicated at the regional level as well, as illustrated in figures 14 and 15.

Fig. 14: National land use

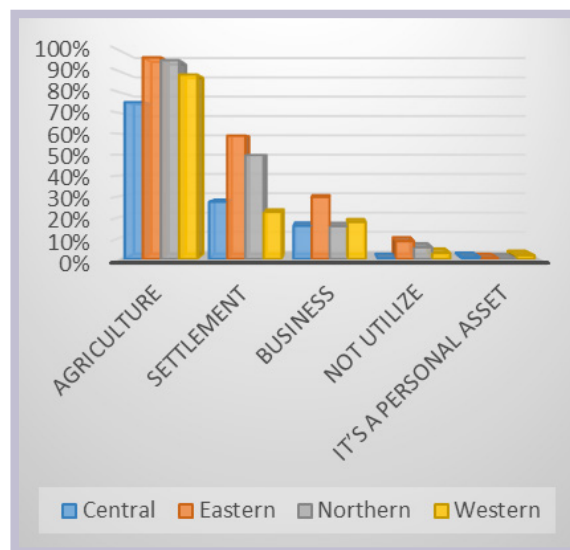
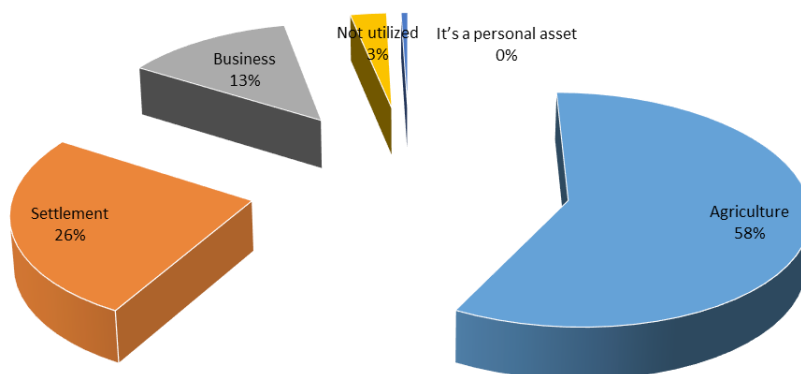


Fig. 15: Regional land use.



## Challenges facing land use planning in Uganda

Table 2 Overall and regional challenges of land use planning

	Overall	Central	Eastern	Northern	Western
Base	478	140	67	155	116
Bribery and corrupt leaders	19%	34%	4%	14%	15%
Inadequate funding	18%	14%	21%	29%	7%
Lack of plan on land use	11%	1%	27%	15%	9%
Grabbing land	10%	12%	9%	3%	19%
Political interference	10%	8%	15%	6%	16%
Encroaching on land	7%	7%	9%	5%	10%
Land boundary disputes	7%	14%	7%	3%	5%
Few skilled personnel working on land issues	7%	6%	15%	9%	1%
Land fragmentation	6%	9%	4%	1%	10%
Government resistance	6%	13%	4%	1%	6%
Lack of proper planning	6%	6%	6%	3%	9%
Community resistance	6%	1%	0%	15%	2%
High population	5%	8%	9%	2%	5%
Lack of security over land	5%	4%	3%	2%	12%

Findings indicate that land use and utilization in Uganda faces a lot of challenges. The challenges faced in land use planning include bribery and corruption of leaders at 19%, inadequate funding 18%, lack of proper land use plans 11%, land grabbing 10%, political interference 10%, boundary disputes 7%, land fragmentation 6%, population increase 5% and lack of security of tenure 5%

The National Environmental Management Authority in its state of the Environment report for Uganda NEMA (1996) argued that inappropriate and uncontrolled land uses are a major cause of degradation and depletion of land resources. The most fragile ecosystems are the highlands and dry lands.<sup>133</sup>

In the face of scarcity of resources and increasing conflicts over land uses, the role of land use planning for sustainable management of natural resources and land utilization are apparent: land use planning helps;<sup>134</sup>

133 NEMA State of the Environment Report for Uganda 1996

134 Raghu Babu Nukala, Dieter Mutz, Strategic Approach for Sustainable Land Use in an Emerging Country – Case of India: A paper prepared for presentation at the 2015 World Bank Conference on Land and Poverty, Washington DC March 23rd – 27th 2015 available at: [https://capacity4dev.ec.europa.eu/.../nukala\\_strategicapproachforsustainablelandusein.accessed](https://capacity4dev.ec.europa.eu/.../nukala_strategicapproachforsustainablelandusein.accessed) on 16 May 2018

- (a) systematically examine current and future land use systems;
- (b) to determine the natural resources assets and the carrying capacity of ecosystems for various land uses and considering changing demands;
- (c) to assess physical, social and economic development factors including institutional and political framework conditions;
- (d) to specify management standards and inputs for different land use types;
- (e) to identify land use options, assessing their potential benefits and risks in ecological, social and economic terms, and thereby contributing to the resolution of conflicts over usage claims;
- (f) to co-ordinate the work of sectoral agencies related to land use.
- (g) in visualisation and translation of long-term social, economic and environmental goals into physical plans that guide sustainable development;
- (h) to minimise land use conflicts and competition among sectors through orderly disposition;
- (i) minimise negative impacts of pollution, climate change, social conflicts and disaster risks. to achieve the developmental targets, as well as reforms and fast-track growth targets in line with the agenda of the government and the people's needs;
- (j) contribute to food security and improved livelihood of rural population by proper planning of rural and agricultural lands;
- (k) contribute to protecting environmental sensitive zones and ecosystem services areas through proper planning; and
- (l) well defined planning processes, contribute to empowering communities and women in planning and decision-making.

From the foregoing uses, it is evident that Uganda lacks a proper land planning and utilization system that is sustainable. Majority of the respondents noted that there is a need to prevent or at least minimize social conflicts arising from acquisition of lands or development of such activities that pose conflicts.<sup>135</sup>

In the opinion of respondents from the rural areas, land use planning should be undertaken giving due consideration for social aspects of inclusive growth, poverty eradication and gender equality.

There is need to support social development, particularly of the rural communities, by securing lands that are required for addressing the issues of livelihood, poverty eradication, inclusiveness and gender. The need to protect agricultural areas that are essential for food security including the prime agricultural lands that are essential for livelihood of rural population is crucial. In addition, there is a need to protect cultural, historic and tourism areas including religious places of importance, scenic areas, heritage areas and archaeological sites. These are indispensable requirements for sustainable development of Uganda and must be addressed in all policies, plans and programmes.

135 Focus group discussion in Hoima and Kagadi

## 4.5 Land administration and management

Overall 65% of the respondents were aware or intimated to have heard about institutions involved in land administration and management. Findings indicate that government has established by law different land administration and management systems. These include the Ministry of Lands, Housing and Urban Development, the District land boards, Uganda Land Commission, National Environment Management Authority, area land committees, local council courts, courts of judicature, recorders at sub country level, departments of mapping and surveys and mediators, Uganda Land Alliance, Uganda Police, land tribunals, Buganda Land Board, Federacion Internacional de Abogadas (FIDA), Resident District Commissioners Offices, Kampala City Council Authority, Uganda Human Rights Commission, Uganda Law Society.

### Effectiveness of land administration and management

Fig. 16: Overall effectiveness

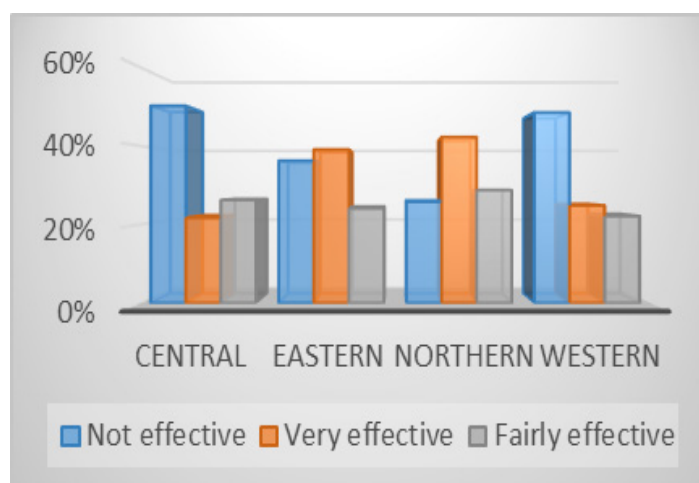
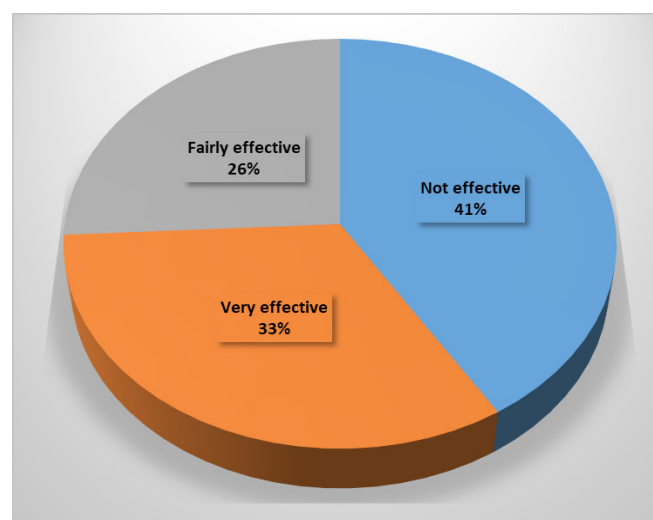


Fig. 17: Regional effectiveness



Generally, there is agreement that whereas administration and management systems have been put in place their effectiveness was lacking. This is attributed to several factors such as, corruption, ignorance of users about land transaction procedures, lack of resources, delays to effect transactions, lack of government support, lack of skilled manpower, political influence among others. Overall corruption is rated as high as affecting the effectiveness and performance of the different land administration and management systems at 78%. A respondent observed that

*“...Majority of public does not know the costs or even procedures for registering land; this explains why most land in western Uganda is customary held and not registered, people are completely ignorant and in the dark on where to start from”*

On the question of the efficiency of the current land registration systems, majority of the respondents observed that the current land registration system supports and functions fairly well for the relatively rich who can afford the related fees and costs. The costs payable to surveyors, lawyers, areas land committee, registration fees and stamp duty on the registration of transfers, inheritances, and new titles were identified as not being proportionate to the value of real estate. According to respondents, only 16% had had their land registered, with most of the registered land being in central Uganda. Majority of the respondents consulted noted the high costs involved as a hindrance to land registration.

Better land tenure security requires the creation of new social capacities, better organisation of rural societies and the development of renewed institutions; it cannot be achieved solely by technological improvements in the field of land registers.

Majority of the respondents observed the need to decentralize the registration systems to the district level by establishing land registrations at each district. It was proposed that these district registries could feed into the centralized government land registry that captures the whole country.

However, a section of the respondents expressed lack of capacity at the district level to undertake land management and administration adding that most districts may not have the necessary personnel to administer land which may pose a challenge. For example, many districts did not have surveyors or lawyers and yet a decentralized system would require a fully established system that would deal with land conflict, mediate or arbitrate disputes without recourse to lengthy court systems.

In addition, most respondents did not trust the recording system established at the sub county level in terms of security and authenticity.

Respondents faulted some land Surveyors as being unprofessional and incompetent adding that they frequently connive with community members to steal or grab land; sometimes they falsify the surveyor results in their favour; surveyor errors sometimes have created land conflicts; they rarely consult with the local communities or neighbours before carrying out surveys. These findings are supported by previous studies that have pointed out the poor state of surveying and mapping in the country which has been described as basic and sometimes below desirable standards.<sup>136</sup>

Generally, there is consensus among respondents that the law regulating surveyors is outdated and does not properly regulate the surveyors' profession. This was attributed to the fact that the Surveyors Act was enacted in 1974 and as such does not reflect the current circumstances. A case in point is the fact that the methodology of undertaking surveys has overtime been modernized by technological developments and this is not reflected in the legislation.

According to Kalenge, Bwanika & Co Advocates, the Surveyors Act is outdated in many respects. It assumes that surveys are conducted using observation and computation techniques that were available at the time of enactment.<sup>137</sup> Most of these techniques have however been superseded by modern innovative techniques and approaches such as automated equipment and total stations, GPS and digital satellite images.<sup>138</sup>

Professional surveyors consulted revealed that they have moved on with the times and are currently utilizing the modern techniques to carry out surveys in the absence of an enabling law.

Kalenge, Bwanika & Co Advocates further indicate that surveyors lack professional standards to regulate them. Majority of the respondents revealed that most surveyors carry out their works in unprofessional manner, they are affected by inordinate delays, charge excessive fees and sometimes do not offer feedback to clients. It is proposed that professional standard for surveyors be embodied in the law to ensure that they carry out their works professionally. The lack of professional standard among surveyors has also been recognized by previous studies.<sup>139</sup>

A study carried out on the need for reform of the Surveyors Act revealed that there is need for government supervision of professionals in private practice to ensure professionalism and to oversee the overall quality of the works undertaken.

136 Review of Legal Framework for Land Administration: "Surveying and Mapping Issues Paper" Prepared by Kalenge, Bwanika & Co Advocates to Private Sector Foundation Uganda under the Second Private Sector Competitiveness Project, 2010.

137 Review of legal framework for land administration: "Surveying and mapping issues paper" prepared by Kalenge, Bwanika & Co Advocates to private Sector Foundation Uganda Under the Second Private Sector Competitiveness Project, 2010.

138 Review of legal framework for land administration: "Surveying and mapping issues paper" prepared by Kalenge, Bwanika & Co Advocates to private Sector Foundation Uganda Under the Second Private Sector Competitiveness Project, 2010.

139 Review of legal framework for land administration: "Surveying and mapping issues paper" prepared by Kalenge, Bwanika & Co Advocates to private Sector Foundation Uganda Under the Second Private Sector Competitiveness Project, 2010.



Finally, the need to update the regulatory framework for surveyors and mapping has been acknowledged under the Land Policy, which is a government policy to enhance the capacity for land rights adjudication, demarcation, survey and mapping services.

Among the strategies set to achieve this policy is the need to review and update the legal and regulatory framework on demarcation, surveying and mapping and to amend and reform the Surveyors Act for improved regulation of surveys and to embrace the use of modern technology.

## CHAPTER 5

# CONCLUSIONS AND RECOMMENDATIONS

### 5.1 Conflicting tenure rights and interests on land

Conflicting land tenure rights and interests on the land tenure system cannot be ignored as this causes insecurity on land ownership, use and in a way curtails economic growth. The tendency of overlapping land ownership interests curtails peaceful utilisation or mortgaging of land as security to acquire financing for development.

In addition, the current escalating land conflicts between the tenants by occupancy warrants a review of the land tenure system as regards *bona fide* and lawful occupants.

Other aspects that could be addressed in the review could entail issues of registration and systematic demarcation of land.

#### Recommendations

1. Review the land tenure systems by;
  - (a) disentangling the conflicting tenure rights and interests on land through legislative reform,
  - (b) sections 30 to 37 of the Land Act that provide for lawful occupant and *bona fide* occupant should be repealed and replaced with provisions that enable a lawful occupant or a *bona fide* occupant to own land independent of the registered owner,
  - (c) amending sections 22-26 of the Land Act Cap. 227 to ensure clear definition and distinction of family and individual land rights from communal rights under customary land tenure, distinguishing the rights and obligations of customary institutions vis-à-vis those of the community and individuals;
  - (d) amendment of the Registration of Titles Act Cap. 230 and the Land Act Cap. 227 to strengthen the trusteeship role of customary institutions,
  - (e) amending the Registration of Titles Act, Cap. 230 and Land Act, Cap. 227 to provide for registration of customary land held under trusteeship by traditional institutions or cultural leaders on behalf of communities in the names of trustees.
2. Land in the country should be systematically demarcated to promote registration of land.
3. The Public should be sensitised on the provisions of the land laws.

## 5.2 Land conflicts

The evolution of land conflicts in Uganda can be traced from the colonial days. In the recent past, land conflicts have escalated and resulted into criminal cases like murder and assault.

The causes of land conflict are highlighted to include population increase and urbanization, shortage of land, poverty, land grabbing, illegal sale of land, inheritance challenges, ignorance of the law, unregistered land, trespass, interferences, lack of documentation on land, weak leadership and weak land policies.

The effects include loss of lives and property, strained relationships, underdevelopment, poverty, displacement and insecurity among others. In order to address land conflicts, the following are proposed:

### Recommendations

1. There should be coordination between the Ministry of Lands, Housing and Urban Development and the Ministry of Local Government in the determination of district boundaries to avoid boundary disputes between districts.
2. Land held by a customary heir should be registered as such (trusteeship) on behalf of the respective beneficiaries.
3. Strengthen the institutions mandated with handling of land matters by sensitising them on their roles.
4. Sensitization of the community members on land related issues and various land policies in order to avert the high risk of land conflicts in the communities.
5. Expedite the passing and implementation of the National Legal Aid Policy to enhance access to justice for victims of land disputes.
6. Civil Society Organisations should continue to compliment the work of government institutions in advocacy, sensitization and legal aid services to address land disputes.

## 5.3 Dispute resolution mechanisms

The resolution of land disputes involves the judiciary, Local Council (LC) Courts, Area Land Committees, Uganda Police Force, District Local Government, religious leaders, traditional institutions, mediators and Civil Society Organisation (CSOs).

For these institutions to effectively handle land disputes, there is need for them to coordinate administratively and to establish legal linkages amongst them.

The challenges in addressing land disputes in the selected regions of Uganda, include lack of faith in the judiciary and other land administration institutions,

corruption, poor facilitation of the institutions and politicisation of land issues, amongst others.

### **Recommendations**

1. Streamline the operations of dispute resolution mechanisms.
2. Carry out massive sensitisation of the members of Local Council Courts on the provisions of the land laws.
3. Translate the Local Council Courts Acts and other land related laws into the local languages.
4. Implement the strategies in place for backlog reduction in order to reduce the long periods which cases relating to land disputes take in courts of law.
5. Build the capacity of traditional institutions to enable them mitigate disputes within their communities. This could be done by strengthening and recognizing the roles of clan leadership structures.
6. Strengthen alternative dispute resolution institutions and mechanisms such as Area Land Committees, the District Land Boards and the LC Courts mandated to handle land administration to effectively address land matters.
7. Fast-track the process of issuing certificates of customary ownership to communities where land is communally owned.
8. Strengthen institutions mandated to handle land administration to effectively address land matters.
9. Strengthen mechanisms to fight corruption in institutions handling land disputes.

### **5.4 Land use planning**

Land use in Uganda faces a lot of challenges which include lack of proper land use plans, inadequate funding of the institutions mandated to carry out land use planning, bribery and corruption of leaders, land grabbing, political interference with planning, boundary disputes, land fragmentation, population increase and lack of security of tenure among others.

The pressure exerted on the land as a result of economic activities and high population rate necessitates land use planning.

### **Recommendations**

1. Government must regulate patterns of land utilisation and provide necessary legal and institutional support.

2. Spatial planning frameworks at national, regional, and district levels should be prepared, communicated and enforced to guide local planning in urban and rural areas.
3. Local land use plans should be prepared in a participatory way by involving all stakeholders.
4. Allocation of land to investors should be transparent and in a competitive process.

## **5.5 Land administration and management**

The most common mechanism for resolution of land conflicts are the Local Council Courts, traditional institutions, the courts of judicature and mediators.

These institutions are relatively considered effective, but are faced with challenges which include lack of coordination amongst them, lack of facilitation to perform their roles, lack of transparency amongst some of the institutions.

### **Recommendation**

1. Land transactions and conveyance should be fully automated.
2. An enabling law that facilitates an automated land registry be enacted.
3. The land registry should be decentralized at the lower local levels to facilitate easy land registration especially in rural areas.
4. Introduce transparent land administration procedures; facilitates faster transacting and conveyance of land.
5. Establish a register of unregistered land at the sub county level.
6. Customary land be registered and certificates issued at district level with a mechanism that allows the register to transfer the certificates to the central registry.
7. The land registration process should at all times involve the local communities to ensure that boundary conflicts are avoided at the earliest opportunity.
8. There is need to sensitize and create awareness amongst the population on the process, procedures of land registration and the benefits that accrue there from.
9. Review regulations on surveying to capture regulation on the use of modern technology in surveying and mapping of land.

## REFERENCES

### Legislation

Constitution of the Republic of Uganda

Land Act, Cap. 227 as Amended in 2004 and 2010. Land Reform Decree 1975 (Repealed law)

Local Council Courts Act,

National Environmental Management Act, <http://extwprlegs1.fao.org/docs/pdf/uga163420.pdf>

National Land Policy 2013,

Physical Planning Act, No. 8 of 2010.

### Policy

National Land Use Policy 2007.

Uganda Bureau of Statistics, 2010; 2011

Uganda National Land Policy Implementation Action Plan 2015/2016- 2018/2019

Uganda National Land Policy, 2013

### Cases

*Amooti Godfrey Nyakaana Vs. NEMA and 6 others* Constitutional Petition No. 3 of 2005.

*Nalongo Burashe Vs. Kekitiibwa Mangadalena*, Court of Appeal, Civil Appeal No. 89 of 2011,

### Books

Wehrmann Babette (2008) *Land conflicts a practical guide to dealing with land disputes*.

### Papers

David Otim and Mugisa Police Charles: *Beyond the reach of the hoe: The struggle for land and minerals in Northern Uganda*. Safer World, April 2014

*Demarcation: A tangible solution to the rising land disputes*. <http://ulaug.org/files/downloads/ULA%20Newsletter%20May%202015.pdf>

Joy M.B Tukahirwa, *Policies, People and Land use change in Uganda. A Case study of Ntungamo, Lake Mburo and Sango Bay Sites*. LUCID Working paper Series Number 7. September 2002

Julian Hopwood and Ronald R. Atkinson (University of South Carolina) November 2015 *developing a land conflict monitoring and mapping tool for the Acholi sub region of northern Uganda*. Available <http://www.lse.ac.uk/internationalDevelopment/research/JSRP/downloads/JSRP28.HopwoodAtkinson.pdf>.

Kaggwa, R., R. Hogan and E. Gowa (2004). Land Use Change, and Degradation and Human Welfare: Lessons Learned from the Lake Kyoga Catchment Area. Policy Brief, Nairobi: UNDP-UNEP Poverty-Environment Initiative, 2004.

Klaus Deininger and Raffaella Castagnini, "Incidents and Impacts of Land Conflicts in Uganda" World Bank Policy Research Working Paper 3248, March 2004.

Klaus Deininger and Raffaella Castagnini, "Incidents and Impacts of Land Conflicts in Uganda" World Bank Policy Research Working Paper 3248, March 2004 <http://web.worldbank.org/archive/website01066/WEB/IMAGES/109509-2.PDF>.

L. M. Wabineno, M. Musinguzi, P. Ekback, Land Information Management in Uganda: Current Status, August, 2011.

Margaret A. Rugadya, Review of Literature on Post Conflict Land Policy and Administration Issues, During Return and Resettlement of IDPS: International Experience and Lessons from Uganda. Publisher? Year of Publication?

Norah Owaraga, "Conflict in Uganda's Land Tenure system", Africa portal a Project of Africa Initiatives, issue No. 26 May 2012. Available at <http://dspace.africaportal.org>.

Raghu Babu Nukala, Dieter Mutz, Strategic Approach for Sustainable Land Use in an Emerging Country – Case of India: A paper prepared for presentation at the 2015 World Bank Conference on Land and Poverty, Washington DC March 23rd – 27th 2015 available at: [https://capacity4dev.ec.europa.eu/.../nukala\\_strategicapproachforsustainablelandusein](https://capacity4dev.ec.europa.eu/.../nukala_strategicapproachforsustainablelandusein).

Review of Legal Framework for Land Administration: "Surveying and Mapping Issues Paper" Prepared by Kalenge, Bwanika & Co Advocates to Private Sector Foundation Uganda under the Second Private Sector Competitiveness Project, 2010.

Rexford A. Ahene, Measures to Improve Access to Land Resources and Related Benefits in Uganda.

Private Sector Competitiveness Project II, Land Component. World Bank / Private Sector Foundation Uganda. Available [siteresources.worldbank.org/INTIE/Resources/Ahene.doc](http://siteresources.worldbank.org/INTIE/Resources/Ahene.doc)

Rugadya A. Margret. Escalating land conflicts in Uganda. A review of evidence from recent studies and survey. Prepared for the International Republican Institute (IRI) and presented at the Uganda Round Table Foundation. June, 2009,

Tripp, A.M. 2000. The politics of women's rights and cultural diversity in Uganda. Paper part of UNRISD's work for the Beijing +5 review: Gender justice, development and rights: Substantiating rights in a disabling environment.

## Reports

Doss et al: Women, Marriage and Asset Inheritance in Uganda: Chronic Poverty Research Centre

Integrated Study On Land And Family Justice in 20 Districts by Ministry of Justice and Constitutional Affairs (MOJ), May 2008.

Jeff Andrew Lule in the New Vision of 12/11/ 2014.

JLOS: Semi Annual Progress Report 2015/2016

Justice Law and Order Sector study report on Transitional Justice on Traditional Justice, Truth Telling and National Reconciliation (May 2013:71)

NEMA State of the Environment Report for Uganda 1996

Study on Informal Justice Systems in Uganda by Uganda the Uganda Law Reform Commission 2018.

Study Report on Succession in Uganda, Page 27. Published by Uganda Law Reform Commission, 2017.

The Uganda Clan Leaders Charter. Cross Cultural Foundation of Uganda 2013,  
The World Bank Development Research Group, Sustainable Rural and Urban  
Development Team 2008.

Uganda Bureau of Statistics 2016, The National Population and Housing Census  
2014–Main Report, Kampala, Uganda.